

Eastside Mediation & Mental Health

**DEALING WITH DIFFICULT
DIVORCE CASES FROM A
PARENT EVALUATOR'S
PERSPECTIVE**

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DEALING WITH DIFFICULT DIVORCE CASES FROM A PARENT EVALUATOR'S PERSPECTIVE

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The most difficult aspect of a custody battle, in my opinion, is that typically both parents have an established pattern of dysfunctional behaviors that limit positive family interaction. The conflict, the drama and the fighting is rarely about the true needs of the children. Too often the emotional needs of both parents are enmeshed in the battle despite the needs of the children. The complex legal issues presented typically exist as a result of the misconduct, or mental impairments of one or both parents, whose intractable contradictory positions operate in direct opposition to the best interests of their children which makes a recommendation as to which living arrangement with these parents is in the child's "best interest" an almost impossible task.

The "best interests of the child" standard exacerbates matters because it is ambiguous and by its nature inevitably skewed by the evaluator or judges' social, economic, cultural, ethnic and religious values and biases. To the extent that these mores and norms are consistent with both parents (which is rare) the Parent Evaluator's recommendations provide residential plan structure and parental motivation to create a child supportive and nurturing dual parent household. When the values and biases of the evaluators and judges are not shared by one or both parents, the legal process itself adds fuel to the flames of parental anxiety and aggressiveness, and may become the justification for the parents to act outside the legal orders and recommendations allegedly for the benefit and protection of their children. Hence, from my perspective as a Parent Evaluator the most challenging aspect of difficult divorce cases is the adversarial system, and the challenging personality traits of the parents involved.

Where parents are simply misinformed about the developmental needs of their children, or temporarily overwhelmed by the level of frustration and disappointment caused by the chaos and uncertainty created in the aftermath of separation, time and competent professional assistance gives them the opportunity to accept the end of their marital relationship, and to begin the creation of a dual family parenting system that works for the

best interests of their children. For those parents issues are not transitional, Parent Evaluator's rely upon consistent evaluation procedures, collateral substantiated information, and critical assessments to do the impossible, make recommendations to the court as to who is in the child's best interests when one or both parents have significant personal deficiencies and limitations in their ability to parent.

I. Educating the Parents about the Developmental Needs of Child is an essential aspect of Developing a Residential Plan that serves the Best Interests of the Child.

For a parenting plan to serve the best interests of the child, it must taken into consideration the dynamic nature of the individual child and her growth process. No one plan can meet the needs of every 7 year old, or address her social and activity needs at the age 12. Parents needs and goals change as well. Despite the legal myth that a plan established when a child is 3 will be just as effective in serving the "best interests of the child" at 11, parents who are educated about the developmental stages of children and attune to the needs of their children are more likely to use this information to reach compromises as parenting disputes arise. Furthermore, parents of children who experience the grief and the insecurity caused by the trauma of divorce need to consider

- 1) How this event is being interpreted by their children;
- 2) How their children's adjustment, or lack thereof, may negatively impact their emotional growth;
- 3) How to detect symptoms of emotional instability and anxiety in their child in need of treatment; and
- 4) How to help their children cope with the significant changes resulting from the loss of family cohesion.

Teaching parents about the developmental stages of children help them devise residential plans that provide the structure their child needs at their particular developmental stage that can reduce their stress And gives parents a foundation for developing reasonable

expectations about the age appropriate ways in which their child might respond to the divorce.

A. Infants, who are just beginning to develop attachments and basic trusts, are vulnerable to change in their environment because separation from their primary caretakers can cause them to experience a profound sense of loss, depression, and regression. Because the infant has no concept of time and is unlikely to understand the reasons for the absence of a primary caregiver, she made need frequent and regular contact with both parents lessen her feeling of distress.

B. Toddlers begin to venture into their environment and need opportunities to explore their new independence with the security of having a significant caregiver nearby. Hence, they may do better in a primary residential household where they are familiar and confident, so that they are not afraid to venture out and experience different aspects of their world. Toddlers can feel a strong sense of loss with diminished contact of a parent, and long separations can make it difficult for the toddler to readily reattach upon re-union with the absent parent potentially impairing the creation of healthy relationships in later developmental stages. How the toddler is responding to the challenges of being separated from the other parent is extremely valuable information for parents to consider in developing a parenting plan.

C. Pre-school age child continues to strive towards individualism and independence. She tends to rely upon rituals surrounding activities, such as a necessary process in preparing for bed before going to sleep, and can become quite upset when these rituals are not performed. The ritual provides structure and environmental predictability, which helps her to feel safe, and secure. There is often an increasing identification with the same-sex parent as gender classification becomes an important developmental milestone. Most preschoolers have the memory capacity to hold the absent parent in mind as a source of comfort when absent. Magical thinking, a common characteristic of this stage of development, makes often makes the preschooler's adjustment to separation and divorce to

some extent dependent upon the degree to which he believes he is to blame for the parental separation. This same magical thinking makes the child's concerns about having their basic needs met by their parents much more extreme. Many children of this age worry about simple things, like food, ("Who will feed me?"), residential placement ("Where will I live?"), and abandonment ("Will you leave me the way that Mommy left me?"). These concerns need to be openly discussed and assurances given to reduce their fear and worry. Parents need to be more cautious about expressing their fears and disappointments in the child's presence, because they are more likely to take on these fears in a more intense way.

Parents also need to recognize that pre-school age children have a difficult time transitioning from one activity to another, making the transition from one parent to the other an even more difficult skill for them to master. Transition times and sequences should be discussed and accommodations made to encourage rituals that make these switches less stressful for the child.

D. School age children range between 6 to 12 years of age. In early grade school most children begin to change their social focus from a parent centered to a friend focus. Children develop peer and community friendships through involvement in social and recreational activities. They begin to understand concepts of morality and moral judgment, through playing games, understanding the rules and abiding by them in social interactions. Children at this age start to develop empathy towards others, and a sense of self in relation to their competency and mastery of goals and skills. The stress and anxiety caused by the child's feelings of loss and security can preoccupy them, and make it more difficult for them to master age appropriate academic and social competencies. Children who do not have the time or opportunity to spend with peers and other adults may be delayed in mastering these skills.

In the later years of elementary school, a child's interests turn towards mastering skills in a variety of social, academic, and physical areas. They become more aware of their strengths and weaknesses. "They tend to be competitive, rule bound and focused on fitting into their peer group social order."(Gould, J.W., 1998) They are very conscious of each

parent's reactions to the break up. "Their feelings may vary from understanding each parent's point of view to blaming one or both parents for the breakup of the family." Children in this age group may blame themselves or shrink from social interaction because of a belief that their friends view them differently. They may experience oppositional feelings towards circumstances and people that make them question how they should react. For example, they may feel excited about having their own room in mother's new home, but afraid of being alone for the first time. They may feel happy that their Dad is taking them to the movies, but disappointed that he is bringing his new female friend with them. Parents need to be attuned to changes in behavior that indicate their child may not be adjusting well to the separation and focus on addressing the reasons she expresses as the cause of her difficulty.

E. Teenagers frequently oscillate between a desire for autonomy and freedom from parental and societal authority, and a need for the security and safety parental rules and structure provide. Their peer group identification and associations take precedence. At this stage boys & girls often seek absent same sex parents in an effort to understand their emerging sexuality, and gender characteristics. It is in this developmental phase divorced parents need to allow their children the flexibility they need to meet their social, academic, and personal goals, which frequently means spending less time with them which is normal.

Parenting plans for adolescents should take into consideration their views and opinions, if they want to avoid resistance to the residential schedule. Teenagers resent being used as a pawn in the parents' disputes. Young people are more likely to voluntarily participate in a structured visitation schedule which adapts to their need for spontaneity and flexibility.

When problems arise in parenting schedules involving teens or they exhibit behaviors that put them at risk, family therapeutic mediation is a helpful tool, because they are often reluctant to participate in therapy. Mediation in this context facilitates respectful discussion of difficult issues in and a collaborative approach to the solving the problems presented. The most beneficial aspect of therapeutic mediation in this context is the collaboration between the parent and child that takes place which can transform their relationship.

II. Children & Adolescents who don't want to follow the parental schedule usually have a protective or pro-social reason for resisting the residential plan.

Parents, who cannot form a collaborative parental alliance or are emotionally impaired, may use the children as a means to retaliate or continue to control the other parent to disrupt the residential time with the other parent. This type of negative influence can encourage the child to refuse to follow the residential schedule. The age of the child makes a difference. Infants and toddlers are typically unaware of the parental attempts to manipulate their feelings towards the other parent, and will usually resume his or her normal behavior towards the other parent in the absence of the other. Consequently, if a child of this age is consistently refusing to spend residential time with the other parent, and routinely does not emotionally settle once in the care of that parent, the underlying causes of the child's distress and resistance should be explored. Play therapy is the most common tools therapists use to discover the source of a young child's distress or the reason for the child's inability to adapt to dual households.

Children between the ages of 6 to 8 are more susceptible to manipulation, and more likely to take sides when intense loyalty is demanded from one or the other parent. Their susceptibility tends to drop between the ages of 9 to 11 years of age period as children by choice form alliances with one parent or both based on their perceptions as to who is most reliable in meeting their needs and support their desired goals. If resistance occurs at this stage of development, parents should explore how the parenting plan is impacting the child's desire to master certain skills, compete in chosen areas, and interact with their peer group. Frequently, minor adjustments and accommodations, can be made to the plan to bring about the child's desired cooperation. If it is the result of undue parental influence, therapeutic intervention can help the child sort thru the conflicting parental demand, and develop coping skills which will allow him or her more autonomy in his relationship with both parents.

In adolescence children are better able to distance themselves from their parents problems, and more likely to rebel against anything that impairs their ability to be their own free agent. Loyalty conflicts tend to stabilize or decrease at this stage of development. If a

teenager does not want to follow the plan it may be that she has outgrown it. Therapeutic parent / teen mediation can greatly assist in creating a plan that meets the child's need at this stage of her development.

III. Impairments, Addictions, and/ or Abuse

Parents suffering from clinically significant behavioral or psychological syndromes may place themselves and those around them, at risk of suffering death, pain, disability, or an important loss of freedom. If their illness is untreated and unstable they present a threat to their children and lack the capacity to parent. Stress and anxiety are two conditions that may exacerbate a previous psychological disturbance and influence parenting. Such parental disruptions may take the form of neglectful parenting, erratic behavior, minimal investment in parental responsibilities, or potentially dangerous behavior. When adult psychological disturbance influence parenting, children, are at risk for a variety of behavioral problems

Psychological problems, including abuse and addiction, can prevent them from adequately providing for the physical, emotional, and developmental needs of their children. If they do, they should be appropriately addressed in the parenting plan. Therapeutic and legal safeguards should be established that provide motivation for the incapacitated parent to seek treatment and help, detection of behaviors that pose a risk to the child, and speedy protections for the child if the parent relapses. If the psychological disturbance or problems does not affect parenting, then they should be addressed only to the extent necessary to detect when they do, and prescribe a plan for protecting the children.

IV. Families involved in High Conflict relationships can be helped thru Parental therapeutic mediation, Child & Adolescent therapy, and parenting plans that are structured to reduce conflict.

For many years mental health professionals have expressed the need to reduce conflict to protect the emotional health of children whose parents are separating and divorced, because of the significant correlation between parental conflict and increased antisocial and dysfunctional behavior among children and adolescents in both married and divorced parents. Children in low conflict homes tend to better adjusted than those in

high-conflict families with both parents. Mothers in high conflict relationships may be so preoccupied with the conflict, that they are not attuned to the needs of their children and neglect to nurture them in significant ways. Many fathers withdraw from contact with their children in high conflict post divorce relationships, and their absence adding to the factors that place these children at risk of being susceptible to emotional instability. Parents in these type of marriages may be tempted to continue their conflict after the divorce is completed. Luckily, Most parents, do not. Unless one or more of the parents suffer from psychological impairments or addictions, the habitual fighting present in their marriage dissipates after separation and they are able to form a parental alliance.

In those situations where the conflict does not end. Jonathan W. Gould, PhD in his book, *Conducting Scientifically Crafted Child Custody Evaluations* (1998), discusses a conceptual framework investigated by Garrity and Bariss (1994) for developing a parenting plans based upon the level of conflict, the parenting style, and the developmental and personal temparment of the child.

A. Level of Conflict

Minimal Conflict

Minimal conflict is characterized by the parents' ability to cooperate on issues related to their children. These couples are able to show self-restraint and self-control, and to find effective means to resolve conflict.

Mild Conflict

Mild conflict is characterized by occasional events of acrimony. Most of the time, the parents are able to co parent. They may argue or berate each other in front of the children only occasionally. These couples only periodically disagree, and certain issues are often the trigger for their conflict. However, overall, their conflict is contained, seldom exposed, and infrequently involves the children.

Moderate Conflict

Moderate conflict involves individuals "who function effectively as parents on one level. Individually, they promote positive ideals for their children, but when they attempt to work together; power struggles and almost-constant conflict ensue" (Garrity & Baris, 1994, p. 47). Children from moderate conflict are frequently exposed to their parents' arguing, verbal abuse, insults, and threats of litigation.

This is the first level of the Garrity and Baris model in which it is predicted that the level and frequency of conflict do not significantly diminish over time. For some parents engaged in moderate conflict, the acrimony may intensify over time as each parent becomes increasingly convinced of the “rightness” of his or her parenting and the “wrongness” of the other parent’s parenting.

Moderately Severe Conflict

Moderately severe conflicted parents “subsume all high conflict situations short of those that involve direct endangerment to a child through physical and sexual abuse” (Garrity & Baris, 1994, p. 48). This is a very violent environment in which children live. Often, parents threaten each other, physically and verbally abuse each other, and have no concern for display of such behaviors in front of their children.

It is not uncommon for parents to actively attempt to negatively influence their children against the other parent. Parents engaged in moderately severe conflict may attempt to alienate children from the other parent, demand loyalty to one parent at the exclusion of another, and place children in the middle of the post marital conflict with little regard for their children’s welfare. For these parents, all factors concerning the children are filtered through one parent’s personalized (pathologized) view of his or her parenting as being good for the children and the other parent’s parenting as being bad for the children. For a more extensive exploration of these issues, see the discussion about Parental Alienation Syndrome in Chapter 8.

Severe Conflict

Severely conflicted parents represent an immediate and direct threat to children’s emotional and physical safety. Children in these families are at exceedingly high risk of damage from parental physical or sexual abuse, drug or alcohol abuse, and/or severe psychological pathology. Safeguards are essential to protect such children. (Garrity & Baris, 1994, p. 49) (Gould, J.W., pgs. 259 to 261, 1998)

B. Parenting Style

Cooperative Parenting

Cooperative co-parenting was defined as parents talking frequently with each other about their children; attempting to coordinate two sets of household rules; and each parents supporting ongoing, continuous contact between the children and the other parent (Maccoby & Mnookin, 1992, p.235). There was considerable stability in cooperative parenting over time. Parents who were characterized as cooperative 18 months after separation (T2) tended to display cooperative parenting 3 ½ years post separation (T3). In their study, 26% of their sample displayed cooperative parenting at

T2 and 29% at T3. Typically, cooperative parents tended to display high communication and low discord.

Conflicted Co-parenting

Conflicted co-parenting was defined as parents who often argued. They tended to perceive their ex-spouses as attempting to upset them when they disagreed. Conflicted parents reported their ex-spouses to have refused-or threatened to refuse-to allow visitation. Ex-spouses were viewed as undermining their parenting as well as creating logistical problems in managing visits with the children. Maccoby and Mnookin (1992) found that the percentage of couples reporting conflicted co-parenting decreased from 34% at T2 to 26% at T3.

Disengaged Co-parenting

Disengaged co-parenting was defined as parents who avoided contact with each other. This resulted in parallel parenting in which each household carried its own set of rules and responsibilities. There was little, if any, coordination between parents regarding the establishment of consistent rules across households. Eighteen months after separation (T2), 29% of the sample displayed disengaged parenting. Three-and-a-half years post separation, that figure rose to 41%. It appears that a significant percentage of couples reporting conflicted co-parenting at T2 resolved their conflicts by avoiding the other parent at T3. That is, some high-conflict parents resolved their disputes by disengaging from each other and establishing separate, independent households. (Gould, J.W. pgs 266-267)

This information can be very useful to legal professionals in designing a viable parenting plan in the most difficult divorce cases which takes into considerations the severity of the conflict and the co-parenting style of the parties to fashion a plan for the particulars of that specific family.

C. Conclusion

“In developing parenting plans, there are no rules about what kind of time distribution is appropriate. The acid test is what works best for each child.”

What is best is difficult to assess, but careful consideration of the factors above increase the likelihood of a more likely than not viable parenting arrangement that protects the child’s interests.

V. Non Evaluative Roles for Mental Health Professionals in difficult Divorce Cases.

Child and Family Therapist: Parents who have difficulty separating their feelings about the other parent from their desire to cooperate in a co-parenting relationship that benefits their children may benefit from post-divorce family therapy, where the therapist can teach them conflict resolution skills, facilitate communication on difficult topics, and mediate solutions to parenting disputes as they arise. They can help children positively adjust to this life changing event, by providing a neutral and safe place for them to express themselves in order to make sense or give positive meaning to the trauma of the loss of their family unity.

Mediation of Parental Disputes: Post divorce mediation of disputes result in higher parental satisfaction, and, consequential less conflict which serves the best interests of the child emotionally, and financially (father's tend less likely to withdraw from their children's lives when parental conflict is reduced).

Parent Coordinator: The mental health profession helps to implement the negotiated or court ordered plan and to contain or reduce conflict. The Parental coordinator monitors the residential plan and mediates disputes as they arise. In addition they perform an essential educational function by meeting regularly with the parents to teach them communication, conflict resolution, and parenting skills. In time of crisis they will may be authorized to temporarily arbitrate residential disputes when the parents become entrenched in their positions until further order of the court.