

# The Divorce Is Over— What About the Kids?

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Extensive time and effort has gone in to crafting a detailed and elaborate shared parenting agreement. It has all the “magic” language addressing visitation, emergencies and joint parenting. Yet, as these ideas are being memorialized, in most instances, the divorcing parents cannot stand being in the same room with one another; nonetheless, we expect them to communicate with one another for the sake of their children, for many years to come. Is this realistic? Is this even possible? What can the family law practitioner do to help insure successful co-parenting? These and related issues are discussed in this article.

Divorce is an injury to the security of an intact family unit. There is a disruption of a family’s immediate functioning as well as plans and hopes for the future. Divorce is the legal end to a marriage, but the co-parental relationship is a lifelong bond that will continue throughout many developmental stages and life-cycle events; however, family law professionals craft elaborate shared parenting agreements knowing full well that its provisions will not be followed.

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Although custody patterns have changed dramatically over the past 20 years, society still tends to view divorced parents as adversaries. The language associated with divorce contributes to this prevailing stereotype: broken home implies that something needs to be fixed; visitation implies that one parent is a “visitor”; custody implies “ownership.” It is, therefore, helpful to view divorce as a change

in restructure of family relationships, rather than an end to them. A family systems perspective looks at the interrelationships among the mother, father, and other caregivers who comprise a nurturing network surrounding the child. This perspective is based on the assumption that parental and extended familial relationships prevail despite a change in marital status. It is important to appreciate the circular nature of a family systems perspective and to consider the emphasis on multiple forces moving in many directions simultaneously as opposed to a single event caused by a previous one. Within a family system, a change in one family member affects all other family members; therefore, a positive or negative shift in one family member often trickles down to the entire system. Accordingly, if only one parent is willing to work on improving communication, a parenting system may still shift in response to that parent’s change efforts.

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## THE BINUCLEAR FAMILY

The binuclear family is a descriptive term conceived by Constance Ahrons during her longitudinal study of post-divorce family relationships.<sup>1</sup> Her seminal study documents a model for healthy parenting partnerships and offers a template that is useful in making sense of post-divorce relationships. Ahrons defines the binuclear family as "any family that spans two households."<sup>2</sup> She created this term to illustrate that "sanctioning divorce means . . . developing a healthy language in which we can speak about it—words such as *binuclear* that can reflect images of a healthy divorced family, rather than words such as a broken home."<sup>3</sup> One of the major differences between nuclear and binuclear families is the potential complexity of extended family relationships. A recurring theme that permeates Ahrons' work is that language plays a significant role within binuclear family structures, and she believes that we need to find better ways to talk about the myriad of intricate relationships that develop after divorce.

## COLLABORATIVE POST-DIVORCE CO-PARENTING

The divorce process itself is a fertile setting for the growth of animosity, and most couples need to disengage from divorce entanglements before beginning to address their co-parental relationship. The term "co-parenting" is often used in reference to joint custody arrangements; but whereas custody relates to parental *rights*, co-parenting refers to parental *responsibilities*. Collaborative co-parenting occurs when parents continue to share responsibility for their children's emotional, physical, and economic needs through a cooperative parenting partnership, and this partnership extends far beyond the final judgment or the signing of the final divorce agreement. The fact that a judge may grant shared parental responsibility or joint custody to a couple does not insure a collaborative co-parenting relationship, and, in fact, it may not be a realistic parenting arrangement for every family. Parents embroiled in the emotional turmoil of divorce and ongoing parental conflict often have a difficult time cooperating and collaborating, and their children may be at greater risk of feeling divided loyalties, whereas collaborative co-parents are free to truly share responsibilities and emotionally support their children.

When parents are introduced to the notion of collaborative co-parenting early in the separation/divorce process, they may be educated about the importance of working together to prioritize their children's needs over their own needs; this motivation will help shape their redefined co-parenting relationship. The goal is to help divorcing couples recognize that children have two parents with unique qualities and skills and to redirect attention from the competitive process over who is the "better" parent. The first two post-separation years are pivotal; most parents find that there is a gradual decline in the intensity of conflict and an increase in the frequency of parental disengagement. Therefore, even couples embroiled in conflict throughout the divorce process can eventually learn to disengage and collaborate. Collaborative co-parents do not necessarily need to be "friends," but they need to learn to respect and trust each other as parents. Competitively, they may unite in a shared pride or concern and fully embrace the challenges of child rearing. When parents are able to share their children collaboratively instead of competitively, they may unite in a shared pride or concern and fully embrace the challenges of child rearing.

## PARENTING TIME CONSIDERATIONS

Scheduling parenting time is one of the challenges that most divorcing parents face. This task is even more challenging when parents are embroiled in conflict and communication is strained. In adversarial divorce cases, parents may find it difficult to promote the best interest of the children and often seek the help of an attorney, mediator, or family therapist. Many states have responded to the parenting time challenge by adopting age appropriate guidelines for creating shared parenting plans. These guidelines are designed to assist parents and courts in the development of parenting plans, and the intent is to encourage frequent, meaningful, and continuing contact with a child. Although it is helpful to consider these guidelines, they often assume ongoing parental cooperation and can become a "cookbook" approach to creating parenting time schedules. As a result, these generic guidelines may reflect the inability to address the individual strengths, weaknesses, and changing needs of each family system. So how can legal and mental health professionals collaborate in helping clients create unique, individualized parenting time schedules? The first step is to assess the integrity of the existing

co-parenting relationship, both from a *historical* and *current* perspective.

Early in the process, family law attorneys should work together in an attempt to remove the children from the legal process, select a therapist or parenting coordinator, then right away, set ground rules. Stipulate that the therapist or parenting coordinator will not be called, by either side, to testify in court. Under the direction of the therapist/parenting coordinator, the parents and the children work towards restructuring their family. Parenting issues that arise can be solved quickly, so that they do not fester. From the inception, parents need to be reminded that they should "love their children more than they may dislike or be angry at the other."

### THE PARENTAL SYSTEM PRIOR TO MARITAL SEPARATION

It is difficult to develop sound parenting plans without considering parenting strengths and weaknesses during the marriage. It is not unusual to find that parents successfully balance each other as married co-parents, and one parent's strength may be the other parent's weakness. Married parents often have different skills and interests and defer to each other when competency in a particular area is challenged. During separation and divorce parents can lose this complementary balance and feel pressured to assume skills and responsibilities for which they are unprepared. Even though gender does not limit a parent's ability to create a nurturing, safe, and loving environment for children, this can be a daunting transition for both parents and children who are adjusting to new schedules and routines.

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*Stipulate that the therapist or parent coordinator will not be called.*

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Addressing the pre-divorce parental alliance, or lack thereof, offers insight into a couple's potential for post-divorce collaboration: Do they jointly make parenting decisions? Have they co-created family rules and rituals? Do they support each other and not allow the children to undermine the other parent's authority? Are they able to relieve each other of childcare duties from time to time without feeling resentment? Can they delay a response to a child's request or demand and designate time to confer with the other parent? How do the parents

determine division of labor in childcare responsibilities? Divorce requires parents to create new ways to share childcare responsibilities, and these questions are useful in helping parents negotiate the necessary changes.

The absence of a strong parental alliance may necessitate further exploration into parenting roles. One factor to consider is the involvement of the non-residential parent prior to separation. Is this parent familiar with sleeping and eating patterns and other rituals associated with daily routines? How has this parent participated in daily household routines? What kind of parenting time would the non-residential parent like to spend with the children? These questions are particularly relevant when planning parenting time with infants, toddlers, and young children. It may be unrealistic to expect a non-residential parent with limited or no experience in daily routines and a weak parental alliance to initially assume an overly ambitious parenting time schedule. Setting realistic goals with clearly delineated provisions for increased parenting time will help non-residential parents transition into new routines. These provisions should also include specific ways that parents can set new boundaries and rules for communicating about important child-related information.

### THE PARENTING SYSTEM AFTER SEPARATION OR DIVORCE

Unfortunately, in many instances, the parties are not able to make their children's needs their priority. From the initial consultation with their attorney, it becomes readily obvious that after the spouses have endured months, (if not years) of conflict and turmoil, the client's focus is on "revenge," "punishing the other spouse," or on monetary issues. It is at the initial consultation that the attorney can alter this. The client should be referred to a therapist to assist with one of the most difficult periods that the client will ever endure. Defusing the anger and working closely with the mental health professional greatly helps to make shared parenting a reality.

Commonly, after months of contentious litigation, the parties finally reach a settlement, resolving all issues in their case. Many times this occurs in a mediation session in which neither parent can be in the same room with the other. Of course, the agreement provides for shared parenting and is premised on cooperation and communication. The agreement is signed and the final judgment dissolving the par-

ties' marriage is entered. The attorney's representation is completed. Or is it? Typically, there is post judgment litigation regarding parenting issues, visitation issues, and a myriad of other issues affecting the children. Addressing children's issues in a collaborative manner, at the beginning of the process, can avoid these post judgment problems.

Major changes in the parental alliance, social relationships, and family interaction patterns occur following divorce. The restructuring process begins immediately upon separation and evolves over an extended time period. Family reorganization following divorce begins with a distinct delineation between marital issues and parenting responsibilities and a clear definition of these issues protects the integrity of the ongoing parental relationship. Parents who have disagreed on parenting issues throughout their marriages may find it difficult to separate "marital" from "parenting" issues. When parents openly disagree on parenting issues, children are more likely to be affected than when parents argue over marital issues.

It is unrealistic to assume that parents will not have disagreements after their divorce agreements are finalized. Some parental conflict is present in most post-divorce relationships and is not necessarily detrimental to a child's development. It is when the parental conflict becomes intensely pervasive that children suffer from being caught in the middle. Children can become frightened by overt displays of conflict and will be less likely to achieve optimal adjustment if exposed to an ongoing exchange of disparaging comments and threats.

### RENEGOTIATING RULES AND BOUNDARIES

For some children, divorce means that one parent decides to relinquish his or her parental role, and, in such cases, parental cooperation and collaboration is a non-issue. But for most families, divorce requires parents to renegotiate rules and boundaries that will shape their new co-parenting relationships. Some parents use a business metaphor to guide the transition and find that clearly delineated "businesslike" rules and boundaries minimize opportunities for future conflict. A number of pertinent issues always need to be explored:

- How much time would each parent like to spend with the children?
- Are they motivated to become collaborative co-parents or will they parallel parent their children?

- How will they divide the childcare responsibilities?
- Would they like the same rules (for discipline, chores, allowances, bedtimes, curfews, etc.) to apply in each household?
- How will the parents negotiate important decisions?
- Are any unilateral decisions acceptable?
- How will the parents exchange information about the children's emotional and physical states, daily routines, weekly schedules, and school issues?
- What role will extended family members play in the children's lives?

Responses to these important questions are the core of the collaborative relationship, as they help define the new co-parenting system in all its complexity.

Collaborative co-parents also need to find practical ways to exchange childcare information. Stahl<sup>4</sup> suggests using a parent communication notebook as a way to share information about very young children, and this notebook should contain direct observations made during parenting time. He instructs parents to write detailed "observations of your child's health, feeding and sleeping patterns, language issues, your child's moods, what soothes your child, your daily routine, and any other detailed information about your child's functions and needs."<sup>5</sup> The notebook should always remain with a child so that parents can maintain an ongoing behavioral log to promote and foster collaboration. As children get older, a weekly phone conference is a helpful ritual in maintaining parental communication.

### A CHILD'S BASIC RIGHTS DURING THE DIVORCE TRANSITION

If parents are aware of a child's basic rights during the divorce process, they may be motivated to share parenting responsibilities. Most shared parenting agreements address, in sum or part, the basic rights listed below, but a quick glance at family court dockets reveals that the printed word does not guarantee compliance. To insure optimal adjustment of a child or children, legal and mental health professionals should carefully address the following seven basic rights:

1. Each child has the right to understand that the decision to divorce is a parental decision and not his or her choice and/or fault.
2. Each child has the right to be free from acting as a messenger, spy, scapegoat or mediator and free from interrogation about the other parent's private life.
3. Each child has the right to maintain independent relationships with each parent and to respect the individual differences in parenting styles and personal differences in each home.
4. Each child has the right to be free from witnessing parental conflict and from the burden of having to side with one parent or develop exclusive loyalty towards a parent.
5. Each child has the right to have regular access and consistent time spent with each parent.
6. Each child has the right to not hear disparaging comments made by one parent about the other parent.

7. Each child has the right to maintain loving relationships with maternal and paternal extended family members.

## CONCLUSION

Involving the children's therapist/parenting coordinator early in the case is imperative; however, their involvement after the final judgment of dissolution of marriage is entered, is just as important. As the attorneys are phased out, the parties must then deal directly with one another.

## ENDNOTES

1. C. Ahrons, *The Good Divorce*. (New York: HarperPerennial, 1994).
2. *Id.* p.x.
3. *Id.* p.3.
4. P. Stahl, *Parenting After Divorce*. (Atascadero, CA: Impact Publishers, 2000).
5. *Id.* p. 805.