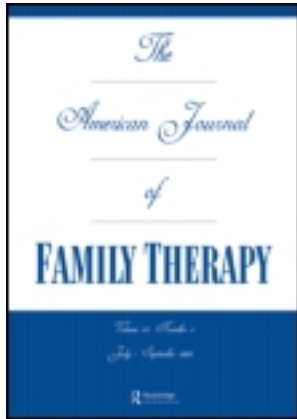


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A Model Equal Parental Responsibility Presumption in Contested Child Custody

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A model rebuttable legal presumption of equal parental responsibility, defined as children spending equal amounts of time in each parent's household, in contested child custody cases, is articulated. This model, a unique hybrid of the "approximation standard" and a joint custody presumption, addresses the concerns of critics of each of these presumptions, and serves as a template for legislators and policymakers seeking to establish equal or shared parenting statutes within their jurisdictions. It also removes post-divorce family therapy from the shadows of the adversarial process. Contrary to the claims of equal parenting opponents, it is argued that jurisdictions with shared parenting statutes retaining the indeterminate "best interests of the child" standard have fallen short of full implementation of equal parental responsibility, and that mounting empirical and public support for the presumption warrants a more sustained effort in this regard.

INTRODUCTION

The focus of this article is the legal determination of contested cases of child custody following parental separation and divorce (hereafter referred to as "divorce"). Although only a minority of parents who cannot agree on the post-divorce living arrangements of their children go to trial, these contested cases define legal norms, and set the boundaries for the negotiation of a majority of cases which occur in the "shadow of the law." Those parents who become involved in disputes over child custody are typically referred to as "high conflict," and in such cases it is assumed that the state must take over decision-making regarding post-divorce parenting arrangements. In many cases, it is also assumed that the well-being of children in these

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situations is best served by awarding primary residence to one parent, in the interests of shielding children from the negative effects of exposure to parental conflict. Only a small proportion of high conflict cases, however, involve any form of violence or abuse.

In recent years state legislatures have become aware of mounting empirical evidence of the importance of maintaining parent-child relationships, even in high conflict situations, and of the limitations of sole custody arrangements in preserving these relationships. At the same time, public dissatisfaction over sole custody and support for a joint custody alternative have forced legislatures to examine and in some cases implement a legal equal or shared parenting presumption in child custody determination.

A rebuttable presumption of equal parenting responsibility means, in essence, that in contested cases of child custody, absent family violence and child abuse, children will continue to reside with each of their parents after divorce, with parents retaining physical and legal custody of their children, parenting time and decision-making responsibility, in equal measure. Such a presumption is the corollary of a rebuttable presumption against equal or shared parenting in cases of family violence and child abuse.

The issue of equal parenting as a legal presumption remains highly contentious, with polarized positions often cast in terms of a battle between women's and fathers' rights, with children's interests often conflated with those of mothers and fathers respectively. Rarely are children's needs placed at the forefront of the debate. In arguing for a legal equal parenting presumption, this article proceeds from a child-focused perspective, noting that when children's needs and interests are at the forefront of considerations, there are many points of commonality between proponents and opponents of equal parenting. First, both camps maintain that the well-being of children should be the utmost consideration in dealing with contested child custody cases. Second, there is general agreement that a key factor in children's adjustment to divorce is the maintenance of meaningful and loving relationships with each of their parents. Third, it is agreed that children need to be shielded and protected from violence and abuse, and also from exposure to high conflict between parents in a custody battle. Finally, if it is alleged or suspected that children are exposed to violence and abuse during their parents' divorce, there is consensus that a timely, thorough and informed assessment be done to determine what measures need to be put in place to protect those children and ensure their well-being.

There is also consensus among divorce scholars regarding the key factors in children's adjustment to the consequences of divorce: the maintenance of meaningful relationships with both parents; protection from violence, abuse and ongoing exposure to high conflict; stability and consistency in children's routines and living arrangements; and financial stability (Kelly, 2003; Amato, 2000; Emery, 1999). There is debate as to the relative importance of these factors, but each is considered vital to children's well-being.

As Moloney (2009) writes, the main conundrum in child custody determination is how to balance child stability and safety with the desire to maximize opportunities for a meaningful relationship with both parents: how can we ensure the maintenance of meaningful parent-child relationships, while protecting children from violence and abuse, and providing a measure of stability and predictability in their lives? The best chance we have at doing so, I suggest, is by means of a rebuttable legal presumption of equal parenting responsibility.

THE BEST INTERESTS OF THE CHILD STANDARD

Family law systems which uphold a primary residence or primary parent criterion have not been subject to the same level of scrutiny as alternative approaches such as equal or shared parental responsibility. Yet in research studies on the views of children and parents most negatively affected by divorce (Kruk, 2010a; Kruk, 2010b; Fabricius, 2003), the message is clear: the sole custody system is the problem. And although a “parent-blaming” message and “parent deficit” perspective is sometimes used to uphold that status quo by some divorce professionals, the starting point of a strengths-based approach, urgently needed in the divorce arena, are the perspectives of children and parents on children’s best interests subsequent to divorce.

Currently, the “best interests of the child” (BIOC) remains the sole or primary criterion upon which contested child custody determinations are based. Indeed, it is asserted that assessing each case on its own merits and the individualized justice afforded by the BIOC standard is the cornerstone of modern family law. This standard provides the background or context within which any attempts at law reform must be situated.

The BIOC notion has a pleasant cadence and seems caring and humane, a noble aspiration, but as O’Connell (2007) writes, it is a trap for the unwary. The vagueness and indeterminacy of the BIOC standard, which gives unfettered discretion to judges not trained in the complexities of child development and family dynamics, has come under increasing scrutiny (Woodhouse, 1999). Given the lack of training of judges in child development and family dynamics, the Family Law Education Review commission, which oversees law school curricula in the United States, concluded that judges are not equipped to make decisions about the best interests of children in regard to custody or parenting plans. Left vague and undefined, based on speculation about future conduct, there are no clear guidelines from which to assess and determine children’s best interests, and judges’ views on the BIOC are highly variable, and outcomes unpredictable and inconsistent. The BIOC standard is a projective test, and the absence of a clear definition of or judicial consensus on children’s best interests renders it unworkable (Emery, 2007). Courts cannot determine an individual child’s “best interests” with

certainty, and judges are forced to rely on their own interpretations of children's interests, and idiosyncratic biases and subjective value-based judgments, including gender bias. Judges must choose between specific views and values regarding child-rearing, usually favoring litigants with values and attributes similar to their own (Warshak, 2007); they also fall prey to the influence of various "rights-based" lobbies, such as those representing one or the other gender in the "custody wars" (Mason, 1996). However, when two "good enough" parents are in dispute over post-divorce parenting arrangements, there is simply no basis in law or psychology for choosing one over the other as a custodial or residential parent (Kelly and Johnston, 2005).

Asked to make life-changing decisions based on a discretionary and subjective assessment of a multitude of factors, judges struggle to make accurate diagnoses of what will be in the long-term best interests of children. Cases are largely decided by the way evidence is presented in court, and thus the BIOC is subject to judicial error (Firestone and Weinstein, 2004). The BIOC standard also makes the court largely dependent on professional custody evaluators. However, the scientific basis for child custody evaluation is hotly contested (O'Connell, 2007), and given the lack of an empirical foundation for such evaluation, child custody recommendations, it is argued, are ethically inappropriate (Tippins and Wittman, 2005).

The BIOC standard provides a fertile battleground for parents in disagreement over post-divorce parenting and catalyzes parents to battle. The uncertainty surrounding the BIOC standard leads to intensified and sustained conflict, and fuels litigation, and in some cases violence. New research suggests that the resultant hostility in the divorce process is the strongest predictor of poor outcomes for children (Bonach, 2005; Semple, 2010). Pruet and Jackson (1999) found that in 71% of cases, the legal process made custody litigants' feelings of anger and hostility more extreme, according to self-reports, and 75% of parents indicated that the process intensified their negative perception of the other parent.

In many jurisdictions, and for many judges, it has been assumed that in cases where there is a trial over the issue, children's best interests are best served by awarding post-divorce care and control of children to one parent only. In this context, an adversarial process results, in which "winning" is the primary objective, as parents engage in character assassinations in an attempt to gain the upper hand in the custody contest. Further, decisions in the arena of family law have in most cases reflected the presumption that only one parent, usually the mother, is to care for children, while the other, usually the father, provides financial support (Millar and Goldenberg, 1998). Joint physical custody of children following divorce is generally seen to be unworkable by the judiciary in cases where child custody is in dispute, and therefore not in the best interests of children (*ibid*). The result is that when

there is a trial, parents typically petition for sole custody, and with the high stakes involved in such a “winner-take-all” forum, family disputes are among the most bitter battles waged in court. Current practice has thus promoted litigation, and as rules of evidence are applied in a highly flexible fashion, and as “almost anything might be relevant to a child’s best interests,” contested custody cases are increasingly complex, costly to litigate, and potentially harmful to all affected parties (Bala, 2000).

On the issue of the BIOC, the views of children and parents, and the legal community and judiciary, stand in stark contrast (Pruett, Hogan Bruen, & Jackson, 2000). Whereas judges focus on parental capacities and deficits when defining the BIOC, parents are oriented toward children’s needs in the divorce transition. Contrary to the judiciary, parents most negatively affected by litigated divorce (Kruk, 2010a; Kruk, 2010b) indicate that children’s primary need is the active and responsible involvement of both parents in their lives.

Some have argued that the BIOC is in fact a smokescreen, as it is not in fact the best interests of children that is at issue, but who is to decide these interests. The legal system and the judiciary do not wish to relinquish their power in the realm of child custody, as the livelihood of family law and allied professionals would be seriously threatened with a legal presumption, which would have the effect of enhancing determinacy and reducing litigation.

A final argument concerning the flaws of the BIOC standard is one that has been overlooked by most legal scholars, and relates to the fact that when sole custody or primary residence orders are made by the court the court does not, as is claimed, award custody after divorce; in actuality it removes legal custody from a parent, as custody is equally shared by parents before divorce. And in the act of removing custody via the BIOC standard, children of divorce are discriminated against on the basis of parental status (Kruk, 2008). Whereas the removal of a parent from the life of a child in a two parent family is subject to the “child in need of protection” test, a much more stringent standard than the “best interests” principle in regard to parental removal, children of divorce are subject to an indeterminate standard in regard to the protection of their relationships with each of their parents. Under the child in need of protection standard, a parent can only be removed as a custodial parent, and only as a last resort, when a finding is made that a child is in need of protection from a parent, subsequent to a comprehensive investigation, assessment and recommendation by a competent child protection authority, rather than simply on the basis of judicial discretion when unproven allegations are made in family court, or parents are simply in disagreement over their children’s living arrangements. Children of divorce are thus not afforded the same protections with respect to their relationships with each their parents as children in to-parent families, a double standard contrary to the *UN Convention on the Rights of the Child*, Article 2, which stipulates that a child should be protected from all forms of

discrimination, including the marital status of his or her parent, and Articles 5, 8, 9, 18, and 19.¹

The needs and “best interests” of children of divorce have been subject to considerable research scrutiny. Harm to children in the divorce aftermath results from broken attachments and parental estrangement, exposure to parental conflict, instability and discontinuity in children’s routines, and a marked decline in children’s standard of living. It is now generally accepted that the psychological distress of children of divorce is substantial, and related to the four factors above, particularly the first two (Kelly, 2000; Lamb and Kelly, 2001; Laumann-Billings and Emery, 2000; Lamb, Sternberg, and Thompson, 1997; Amato, 2000; Booth, 1999; Emery, 1999). Tragically, current outcomes in divorce are such that all four conditions are present for large numbers of children of divorce, particularly those who have been the subject of child custody litigation. A significant number of children have lost contact with their non-resident parents subsequent to divorce. Children are thus uprooted, as their primary attachments to one parent and set of kin are effectively severed; children’s adjustment to divorce in such “father-absent” situations is highly problematic (Lamb, Sternberg, and Thompson, 1997; Amato, 2000; Booth, 1999; Emery, 1999). At the same time, custodial parents, usually mothers, are overwhelmed by the assumption of sole responsibility for their children, while non-resident parents suffer the absence of their children (Kruk, 1993; Braver and O’Connell, 1998). Conflict between parents does not abate in disputed cases, particularly those in which the court is involved in determining custody. Child poverty remains a pressing issue, as does women’s traditional economic dependence on men, neither of which are effectively addressed within the sole custody system.

Yet sole custody continues, even in those jurisdictions that have implemented equal parenting legislation, which has fallen short of its original aims and thereby compromised its success. Equal parenting legislation in Australia, for example, contains a number of qualifiers, such as the application of the indeterminate BIOC test to rebut the presumption, in place of clear, unambiguous and firm guidelines. The result has been that equal parenting is not being ordered in the majority of contested cases; court orders

¹Article 5 emphasizes the primacy of parents in their children’s lives (“States Parties shall respect the responsibilities, rights and duties of parents...”), Article 8 stipulates the child’s right to preserve his or her family and cultural identity, and Article 9 states that children shall not be separated from their parents against their will. Article 18 indicates that both parents have the primary responsibility for the upbringing and development of the child, and States Parties shall render appropriate assistance to parents in the performance of their child-rearing responsibilities. Article 19 refers to needed measures to protect children from all forms of violence, injury or abuse, neglect, maltreatment or exploitation—and it refers to actual violence and maltreatment, not risks of violence and maltreatment. To remove child custody from a parent because of perceived risk rather than proof of harm is not in keeping with the Convention.

for shared care (defined as a minimum of 35% time with each parent) in litigated cases stand at only 12.6% today. Orders for shared care in judicially determined and consent cases have increased from 9.1% prior to the reforms to only 14.2% after. And the rate of equal parenting orders stands at only 7% (Kaspiew et al., 2009). It may thus be questioned whether Australia has implemented true equal parenting legislation.

REBUTTABLE LEGAL PRESUMPTION OF EQUAL PARENTAL RESPONSIBILITY

From the point of view of child development and family therapy scholars, what is needed in child custody determination is a child-focused approach that emphasizes children's needs and parental responsibilities, and reduces the harms attendant to divorce for children and family members. Such a child-focused approach is the cornerstone of current divorce law reform initiatives in North America and Europe, as well as Australia. A "responsibility-to-needs" framework, which focuses on children needs, parental responsibilities to those needs, and the responsibilities of social institutions to support parents in the fulfillment of their parental responsibilities is gradually supplanting a rights-based approach to child custody (Kruk, 2008). At the same time, it is recognized that any new approach to child custody must also attend to the needs of parents; although children's needs are distinct from those of their parents, they are inextricably linked. Mothers and fathers who are satisfied with their parenting arrangements are less conflicted, and reduced conflict is associated with children's well-being. New legislation thus needs to take on board the concerns of both feminist and fathers' advocacy groups, including feminist concerns regarding family violence, recognizing primary caregiving, and inequities associated with awarding legal joint custody without a corresponding responsibility for child care involvement, as well as fathers' concerns about their disenfranchisement from children's lives, the importance of parent-child attachment, combating parental alienation, and access enforcement.

Finally, it is now recognized by both child and family and legal scholars that child custody law reform needs go beyond cosmetic changes such as changing the language of divorce, and also beyond shared parenting legislation that retains the BIOC standard, which has resulted in only a small proportion of disputed cases being awarded shared or equal parenting within a continuing adversarial framework. Such an approach would ensure determinacy and consistency in decision-making, and remove discretion in areas in which judges have no expertise.

Our model equal parenting presumption was developed with these concerns in mind, and is unique in several respects. First, it is a child-focused framework that takes on board the primary concerns of both feminist and

fathers' groups. Second, it merges a rebuttable legal presumption of equal parenting responsibility (EPR) with a rebuttable presumption against EPR in cases of family violence and child abuse. Third, it addresses the issue of discrimination against children of divorce on the basis of parental status, as it adopts a "child in need of protection" criterion rather than the indeterminate BIOC standard to removal of child custody. Fourth, it is a hybrid of the approximation standard and an equal 50-50 parenting time apportionment (joint physical custody), but also incorporates some elements of the parenting plan approach and primary caregiver presumption. Our presumption minimizes the subjectivity of the BIOC standard while at the same time taking into account children and families' individual and unique circumstances.

We define a rebuttable presumption of equal parenting responsibility in contested child custody cases as children spending equal amounts of time in each parent's household. The presumption involves a four-stage process of child custody determination, as follows:

- (1) Establish a legal expectation that parents develop a parenting plan before any court hearing. The role of the court would be to legally sanction the parenting plan or agreement, whether sole, shared, or equal parenting. Parents would retain the options of developing the plan jointly through negotiation, legal negotiation, or family mediation; family mediation and family support services would be focused on assisting parents in the development of the plan. Parental autonomy and self-determination in regard to post-divorce parenting arrangements would thus be the cornerstone of family law.
- (2) Establish a legal expectation that in cases where parents cannot agree on a parenting plan, existing parent-child relationships will continue after separation; that is, in cases of dispute regarding post-divorce parenting arrangements, the "approximation rule" would be the legal standard; that is, the relative proportion of time that children will spend with each parent after divorce will be equal to the relative proportion of time each parent spent performing child caregiving functions before divorce. Children's needs regarding maintaining relationships with each parent, and stability and continuity in regard to their routines and living arrangements, would thus be addressed; and parents' needs for a fair, gender-neutral criterion would also be accommodated. The approximation standard, drafted by feminist scholar Katharine Bartlett for the American Law Institute, incorporates feminist concerns regarding child custody (Brinig, 2001), but also addresses fathers' concerns regarding the maintenance of meaningful relationships with children after divorce. Given the gender convergence in regard to division of child care tasks and the emerging norm of shared parental responsibility for child care in two-parent families (Atwood, 2007; Marshall, 2006) the approximation criterion is

- expected to translate to roughly equal time apportionment in most disputed cases of child custody.
- (3) Establish a rebuttable legal presumption of equal parenting time in cases where both parents were primary caregivers before divorce, or claim to have been primary caregivers, and are in dispute over the relative proportion of time each parent spent performing child caregiving functions before divorce. A preoccupation with the amount of time spent with each parent is the Achilles' heel of the approximation standard, and tracking parental time devoted to children's care before divorce is a dauntingly complex task (Lamb, 2007; Warshak, 2007). Because some parents will dispute each other's estimates of past time devoted to child care, with "mathematizing time" a focus of conflict, in the interests of shielding children from ongoing conflict, an equal parenting time division would be the legal norm in cases where both parents were primary caregivers before divorce.
 - (4) Establish a rebuttable legal presumption against equal parenting in cases where it is established that a child is in need of protection from a parent or parents. This presumption would develop clear and consistent guidelines for child custody determination in family violence and child abuse cases, consistent with those for children in two-parent families, with the safety of children the paramount consideration. For some families, divorce will solve the problems that contributed to the violence; for others, the risk of abuse will be ongoing. Our presumption does not equate to a "presumption of no contact between the perpetrator and child in all cases where domestic violence is *alleged*" (Jaffe et al., 2003); as in current practice, courts would make protective orders only when allegations are upheld. Finally, as family violence and spousal abuse are criminal matters, they must be recognized as such in criminal law (Chisolm, 2009).

IMPLICATIONS FOR FAMILY THERAPY

There is now a general consensus among child and family scholars that neither the BIOC standard nor sole custody or primary residence orders are serving the needs of children and families of divorce, and agreement that equal parenting is beneficial for the majority of children and families (Fabricius, Diaz, & Braver, 2011; Millar, 2009; Kruk, 2008). The active involvement of both parents in children's everyday lives and routines, including bedtime and waking rituals, transitions to and from school, extracurricular, and recreational activities, and significant time during the school week is important to children's well-being (Fabricius, Braver, Diaz, & Velez, 2010; Lamb & Kelly, 2009). Further, the literature does not support the presumption that EPR is contraindicated in cases of high conflict, as high conflict should not be used to justify restrictions on children's contact with either of their parents (ibid).

Finally, the scientific community is now in a position to draw conclusions regarding the amount of shared parenting time necessary to achieve child well-being and positive outcomes, with an emerging consensus among divorce researchers that a minimum of one-third time is necessary to achieve child well-being, with additional benefits accruing up to and including equal (50-50) time (Fabricius et al., 2010; Lamb, 2004). There is also clear and strong public support for EPR as in the best interests of children, including in high conflict cases. These and other arguments in support of an equal parental responsibility presumption will be discussed in a forthcoming issue of the *The American Journal of Family Therapy*, "Arguments for an Equal Parental Responsibility Presumption in Contested Child Custody."

Our EPR approach is unique, and represents an evolution from the BIOC standard, the primary caregiver presumption, the parenting plan approach, the approximation rule, and equal parenting time. Although it is first and foremost a child-focused framework, it also addresses the primary concerns of both mothers' and fathers' groups in regard to child custody determination. It combines a rebuttable legal presumption of EPR with a rebuttable presumption against EPR in cases of family violence and child abuse, with a legal requirement that family violence allegations be fully investigated in a timely manner, and family violence treated as a criminal act, with a corresponding finding made that the child is in need of protection. In replacing the BIOC standard with the "child in need of protection" standard in cases of abuse, it affirms the right of children to know and be cared for by both of their parents, regardless of parental status, and the right of children to be equally protected from parental abuse.

For an EPR presumption to work, supports need to be in place to ensure its success, including parent education programs, therapeutic family mediation, parenting coordination and other specialized programs for high conflict families; as in Australia, these programs must remain an essential part of EPR legislation.

An EPR presumption in child custody determination, the next step in the evolution of child custody law, providing the operational reality to the conceptual progression from fault-based to no-fault divorce, sole custody to shared parenting, and parental rights to parental responsibilities, will dramatically transform the practice of family therapists and mediators currently working in the shadow of the "winner take all" adversarial system. It will allow family therapists to work with parents on an equal footing with respect to their legal rights and responsibilities regarding post-divorce parenting, which opens the door to family therapy focused on facilitating the development of cooperative equal or shared parenting plans within a non-adversarial negotiating climate.

A parenting plan is a detailed articulation of post-divorce parenting responsibilities, including specific arrangements regarding time spent by the

children in each parent's household, holiday schedules, how decisions are made, and how costs will be allocated. Such a plan orients parents toward the development of a post-divorce parenting arrangement that primarily reflects children's needs and interests, emphasizes parental responsibilities to children over parental rights, and leaves neither parent feeling either overburdened or disenfranchised in relation to these responsibilities. Such an approach focuses primarily on children's needs, requiring parents to consider the variety of functions that constitute post-divorce parenting and to allocate responsibility for these functions. Under equal parenting legislation, it is assumed that the interests of the majority of children are best served by the substantial and continued participation of both parents in child rearing, within some form of equal or shared parenting arrangement. To this end, parenting plans avoid use of words such as "custody" and "primary residence," which connote images of power, possession, control and ownership, replacing them with the language of "parental responsibility" and "cooperative parenting."

The means by which equal or shared parenting plans can be formulated include both family therapy and therapeutic family mediation. Courts' involvement in the divorce process changes dramatically, as they are no longer responsible for the determination of custody, except in certain cases. Rather, when an application for divorce or legal separation is made, the requirement that parents in conflict formulate a parenting plan is established by the court. This is followed by an order that clarifies and supports the negotiated parenting arrangement, in which children's needs, parental responsibilities and the preservation of existing parent-child relationships are emphasized, as opposed to parental rights and entitlements.

As the means by which parents are assisted to formulate and determine their own post-divorce parenting plans, family mediation is not simply a dispute resolution device, and the goal of mediation is not merely the settlement of disputed issues. Mediation should serve to promote a situation where parents have taken on the responsibility for separating their previous marital conflicts from their ongoing parental responsibilities, and are able to develop a parenting plan that is guided primarily by their children's needs for both parents actively involved in routine parenting, and enhanced cooperation between the parents. Family mediation thus becomes a therapeutic process that is primarily child-focused; although it may not involve a formal therapeutic process, mediators can helpfully draw on the knowledge and skills of family therapy to the extent that the process may well become a therapeutic experience for the parties.

Ideally, post-divorce parenting arrangements should attempt to approximate as closely as possible the parent-child relationships in the original two-parent home. In the majority of instances, this would translate into a parenting plan in which both parents have not only equal rights with respect

to their children's welfare and upbringing, but also active responsibilities within the daily routines of their children's care and development, in separate households.

Family mediation has considerable (and as yet largely untapped) potential in establishing such cooperative arrangements as the norm, rather than the exception, for divorced families. For the most part, family mediators have avoided directly promoting and facilitating shared parenting arrangements, for diverse reasons. Indiscriminately recommending equal parenting for those who are extremely poor candidates is highly problematic: there are clear contraindications to equal or shared parenting, including cases of child abuse, neglect, or exploitation, or a stated disinterest in caring for the children. While these point to the need for careful screening of potential candidates, the notion of establishing equal or shared parenting plans as an ideal is based upon the assumption that in the majority of cases, both parents are capable and loving caregivers and have at least the potential to minimize their conflict and cooperate with respect to their parenting responsibilities. Unless there are compelling reasons to the contrary, children's needs in divorce are assumed to be best met by some form of shared parenting arrangement.

With adequate therapeutic support, the ideal of cooperative equal or shared parenting could become a reality for the majority of separated, divorced and remarried families, as shared care arrangements have now been established as a norm in two-parent family structures. Such an outcome has largely eluded those practicing traditional approaches to dispute resolution in divorce, including mainstream models of family mediation. When applied to the divorce arena, the mainstream model, with its highly structured and neutral orientation, is extremely limited in its potential: a pure form of mediation which is strictly rule-governed and limited to dispute settlement does not permit the wealth of data related to positive post-divorce outcomes to emerge and guide the mediation process.

A therapeutic approach to family mediation offers an effective alternative to the mainstream mediation model, and may be the key in establishing cooperative equal or shared parenting as the norm, rather than the exception, for divorced families. The model represents a radical alternative to traditional approaches: its goals are therapeutic, the mediator's role is interventionist (influencing a settlement that is in the "most adequate" if not "best interests" of the child as well as fair to both parents), assessment of existing co-parental and parent-child relationships are emphasized, and interventions are geared toward the promotion and facilitation of cooperative shared parenting after divorce. The mediation process is transformed into a longer-term therapeutic endeavor, focused not only on the production of a shared parenting agreement, but on the durability of that agreement.

In addition to therapeutic family mediation, family therapy is an important and needed support in the separation and divorce transition. Family

therapists are uniquely situated to assist in the development of post-divorce parenting plans, and to operationalize the principle of equal or shared parental responsibility underlying emerging developments in divorce law. Family therapy may be used to introduce parents to equal or shared parenting as a viable alternative, reduce their anxiety about shared parenting as a living arrangement deviating from the norm, enable them to consider a range of parenting options, help them work through the development of a parenting plan, and support them in the transition to post-divorce parenting as they implement the plan in as cooperative a manner as possible.

The termination of a marriage necessitates a restructuring of family life, and family therapists have an important role to play in facilitating family restructuring to enable as many children as possible to have a meaningful and active relationship with both parents, free of inter-parental conflict. In the context of facilitating an equal or shared parenting plan, the goals of family therapy include aiding the adjustment to divorce for all family members, restructuring the parents' relationship, restructuring parent-child relationships, and enhancing communication and problem-solving skills. As with the therapeutic family mediator, the family therapist's role is highly interventionist; a key function of family therapy is to help parents to improve their ability to co-operate and negotiate with each other after divorce. The challenges facing divorced co-parents are numerous; once in place, equal or shared parenting responsibility requires a high level of organization, co-operation and commitment. Family therapists have a critical role to play in assisting parents to meet these challenges.

The family therapy process must include detailed history-taking and assessment of existing co-parental and parent-child relationships; and interventions are geared towards the promotion and facilitation of equal parenting after divorce, reflecting existing relationships. The therapeutic process is then focused not only on the production of a equal or shared parenting agreement, but on the durability of that agreement.

Legislative and policy reform in the direction of equal parenting sets the stage for therapeutic family mediation and family therapy focused on the facilitation of equal parenting plans as described in this article. And with adequate therapeutic mediation and family therapy support, the ideal of co-operative equal or shared parenting may well become a reality for the majority of separated, divorced, and remarried families.

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