

Some Suggested Topics for Family Law Professional Meetings

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Posted on AssessFamilyLaw.org are 25 suggested components of a good family law system. One of its most important components calls for monthly meetings of family law professionals (judges, attorneys, counselors, mediators, parenting coordinators, co-parenting educators, program persons, etc.) to discuss a wide range of topics essential to serving clients, children, and families better.

Following are several possible topics, and there are obviously many others. Our foundation's view is that many family law professionals are eager to improve the law's service to families in crisis and transition and that (especially with CLE credit being arranged for them) they will welcome the opportunity to both present on and also engage in discussion on topics like these.

A: The Ends to be Served by Family Law and Family Professionals

1. Discussion of beginning with the end in mind: attorneys' roles in helping parents define outcomes that will actually serve their best interests. See R.P.C. 1.2. What are the goals in a divorce or other family case? To win? Win what? To maximize client outcomes? What client outcomes? Should a jurisdiction have a statement of the goals in family cases (perhaps including doing no harm, ensuring safety, reducing conflict, building cooperation, and protecting the children and relationships in the family)?
2. Has the law been largely mistaken in assuming that persons involved in family cases have conflicts in their legal interests? Could it be that in the vast majority of cases their legal interests are overwhelmingly mutual? In a divorce, for example, aren't the legal (or if one prefers, best) interests of the parents quite concordant? Putting aside their possible felt *sense* of conflict in their personal relationship and the way they've related and perhaps disappointed each other, don't both have a legal interest in:
 - Reducing their children's already enormous losses from the divorce,
 - Shielding their children from parental fighting,
 - Living in the security of making their own decisions instead of the fear of submitting to adversarial processes and decision-making by outsiders,
 - Giving their children the best approximation of what they would have had if their parents' marriage hadn't failed,
 - The simple and inexpensive divorce instead of the complicated and painfully expensive one?

What would be the implications of acknowledging this view of parents' legal interests and best interests?

3. Developing a standard whereby judges can consistently count on all attorneys to act as co-problem-solvers rather than mere problem-reporters. How many judges have systems in place such that they can know that the two attorneys approaching the bench at a family hearing will be helping to solve problems, reduce conflict, build cooperation, and protect the children and relationships in the family? Is this in place anywhere? If so, how does that system work and how did it come about?
4. Dr. Tim Onkka has observed that all family professionals share a common unseen client—the parents' future co-parenting relationship. What would this mean? Why would it be an important insight? What would it suggest about good work by judges, attorneys, and other family professionals? What would change for the better about legal processes and practices if judges and attorneys better appreciated the importance of preserving and building the best possible relationships between separated and divorced parents?

B: The Face of the System and Public Education

5. Creating the best possible front-end public education materials, including a website like FamilyCourtWebsite.org, judicial pamphlets for various family cases, videos, and PSAs. Is the language right for 90% of the public?
6. “Deforensifying” the adversarial language commonly used in family cases—in summons forms, pleadings, correspondence, etc. Correctly and helpfully captioning all divorce and paternity cases. The advantages of vanilla pleadings. The advantages of a problem-solving summons form and the contents of one.
7. Effectively educating the public at large about the call for safety and cooperation in family cases (website, pamphlets, PSAs, public presentations, etc.).

C: Rules and Court Practices

8. The mechanics and promise of any rule for cooperative family law. Discussion of current rules and possible improvements. Consideration of the Model Rule on AssessFamilyLaw.org.
9. Developing a culture of cooperation among attorneys so that among other

- things, when safe and feasible, issues are discussed before motions are filed. When should those discussions be expected or required? What should they include? Accounting for past problem-solving? Sharing between counsel regarding resources parents could and should be referred to for success in future problem-solving? How should the discussion be explicated in any motion?
10. Developing excellent practices for pre-filing handling of divorce, paternity and other family cases; examining how attorneys can voluntarily get cases off to an excellent start even before judicial supervision is available.
 11. Using cooperative status conferences to build professional and parent cooperation.
 12. Developing the best ways to help parents prepare Parenting Plans. What about the models on AssessFamilyLaw.org? What are good ones? Should the jurisdiction have a standard one? What should ours be? When and where should it be recommended? Required? How can it be used to help families and the professionals serving them?

D: Parent Education

13. Making available the best possible basic co-parenting classes (supplemented by website preparation like that on UpToParents.org) and making effective early referrals to those classes. Who should audit current classes and make recommendations about them? Should judges attend on occasion to improve the classes and coordinate the messages that are shared at the bench and in orders? Should there be separate classes for victims of domestic violence?
14. Improving the percent of parents attending basic co-parenting classes—and attending early? Should we require litigating parents to confirm compliance in their pleadings?
15. Effective and timely referral to a Level II class (and perhaps other helpful resources) of nonviolent families with continuing conflict. How professionals can remember that these resources exist and the need to use them. How to set a standard of care about how many times a family is in court before it is referred to the class or alternative help (should there be a standard making a second appearance in court—or certainly a third—presumed cause for such a referral?). How to make effective referrals (why some referrals never get parents to the class while others do). How and where to discuss a program that's in trouble, in disuse, or has closed.
16. Rethinking conflict and legal disputes in family cases as warning signs

and calls for therapeutic referrals rather than calls for motions and hearings. When are there better responses to family issues than motion practice, custody evaluations, and trials? What are they? “When parents are thinking small, professionals should think large.”

E: Ongoing Interprofessional Discussion and Education

17. Is it helpful or detrimental to families to think of divorces and other family crises or transitions as cases? In what ways would families be better off if we saw them (and educated parents to see them) as calls for honestly confronting of grieving, cooperating for the sake of children and the healthy relationships within families, and creating new relationships (for example, a co-parenting relationship to replace the lost intimate relationship).
18. How would the recasting of divorces in this way change (a) the attorney-client discussions defining the objectives of the representation, (b) the way that the challenges of divorce are understood, (c) the chance to see issues as opportunities to try out new co-parenting relationships rather than calls for legal intervention, and so on?
19. Most observers will acknowledge that there are hazards to involving families in litigation, but are there are also hazards to over-reliance even on law to build good outcomes in divorce and other family crises and transitions? For example, laws are about minimums (for A to have a right to demand “x” from B, it must be true that “x” is the minimum that B owes. But do such assertions of rights cause obligated persons to want to cap their responsibilities at those minimums? Does this exercise in attempted compulsion, therefore, create a dangerous minimalism in the minds of otherwise generous parents?
20. A cooperative response to issues and allegations of domestic violence or abuse. What would that entail? How would it protect victims? How would it discourage false claims? What standards should be in place for professionals’ responses to claims of DV? What is the county’s written plan for responding to claims of DV, and how is it being used to protect the public?
21. Ongoing bench and bar collaboration to ensure that courts and attorneys have the best possible alternatives to mere court rulings (e.g., outstanding regularly reviewed high-conflict classes, parenting coordination, etc.)—AND make effective use of those.
22. Developing ways to involve paralegals, legal secretaries, and other support staff into cooperative family practices.

23. Presenting and discussing local examples of excellent problem-solving (attorneys who used specific skills and techniques to constructively and courteously resolve issues, reduce tension at a four-way conference, rid correspondence of unhelpful language, model courtesy, etc.).
24. Study of progress in other jurisdictions. What is excellent in other jurisdictions in terms of rules? In terms of ongoing professional education? In terms of interdisciplinary cooperation? In terms of parent education? What else?
25. Discussion of reports from persons attending excellent conferences (state, AFCC, ACR, NCJFCJ, etc.).
26. A local protocol for making the first week (month?) of a case a model of cooperation for parents (addressing with parents questions on safety, child needs, opportunities for cooperation, best means of cooperation, available resources supporting cooperation; avoiding unnecessary motion practice in favor of reaching agreement on provisional issues; collaborating and consulting with fellow counsel and *pro se* spouses, etc.).
27. Discussing the damaging effects of parent conflict on children. Appreciating what happens to children of conflict (see UTP handout, including quote on Magistrate Ready's bench); understanding how some professional interventions tend to reduce conflict while others seriously exacerbate it. (See UpToParents' schematic regarding the effects of litigation on parents, parenting, and children.)
28. Grasping the difference between judicial decisions and solutions. Helping parents understand that judicial decisions may not end their conflict or solve their problems—and actually may expand them. (Many attorneys, judges, and therapists grasp the crucial distinction between rulings and solutions, but, surprisingly, many do not. The distinction is aptly captured by Florida attorney Sheldon “Shelly” Finman’s dictum describing a judge’s decision in a custody case as “the starter’s pistol to the family’s odyssey of conflict.”)
29. Helping parents and professionals better understand the hazards of litigation *and custody evaluations*. See Johnston and Kelly (2005) and other articles.
30. Learning the importance of limiting custody evaluations to cases of dangers to children, not selections between two “good enough” parents.
31. Understanding and communicating the concept of joint legal custody (JLC). What is it? How can parents understand it and successfully use it? (See UpToParents article describing JLC as an arrangement whereby

- separated and divorced parents make the major decision in their children's lives in the same open and cooperative way that happily married couples do.) How does it stand to produce better outcomes for children, parents, and other family members? How does it promote better co-parenting and child outcomes? What are the counseling and other resources parents can be referred to so that JLC can work? When should it be used, and when should it be avoided?
32. Sharing parent reviews of how the current system is functioning, serving families well, in need of improvement.
 33. Overcoming the myth of separation and divorce as competitions. How do professionals avoid buying into the myth? How can they rescue parents from it? What are all the places the myth comes from, and what are some good ways of educating parents out of it?
 34. Helping parents understand that their real issues may not be legal—and may have no legal answer. Helping parents understand the difference between constructive uses of law and destructive uses of law in family cases.
 35. The role of the attorney in making therapeutic referrals. How do attorneys either help or hinder success in counseling, mediation, parenting coordination, and other interventions? How can attorneys be educated in their role as conduits to the helping professions?
 36. The specifics and use of a Family Attorneys Pledge of Cooperation.
 37. The role of the family attorney as educator. What topics do local attorneys address with their clients (and their clients' support systems)? How do they succeed, or fail? How to teach to people not in a mood to learn? Too emotional to learn?
 38. The relevance and guidance to be found in statements of professionals standards, such as those included in the “Attorneys as Healers” article found on the “Professionals Corner” link of UpToParents.org.
 39. Managing tribal warfare and recruiting extended family, new relationships, and professionals into roles helpful to the family members and relationships.
 40. Pat Brown shares this observation: “If parents will agree on one thing, they’ll agree on everything, if that one thing is, ‘What do we want our children to look like when they’re 25?’” Is he right? If so, what would that insight mean for handling family cases? How would the insight help in implementing the Indiana Supreme Court’s declaration that in family

- cases with children, the overarching policy goal is the protection of those children's best interests?
41. Considering ways that judges, lawyers, mediators, and other family law professionals help by modeling courtesy and cooperation. What are leading good local examples?
 42. Broader use of collaborative law and discussion of its place in family cases overall.
 43. Broader use of resources like UpToParents.org. How to use parents' Agreed Commitments to help parents develop better parenting plans and patterns. As preparation for four-way meetings, mediation, hearings, etc. How to use the educational resources on the site.
 44. Reviewing other particularly helpful resources.
 45. Is there even a standard of care in family law? On fundamental issues like when it is appropriate to have families in court or to keep them out of court, what is the standard? On when to refer them to other assistance (mediation, counseling, high-conflict classes, etc.)? Should the bench and bar develop, study, and put into consistent use such a standard?
 46. The relative effectiveness of (a) lecturing/ordering parents versus (b) encouraging parents. What are the actual effects of trying to order specific performance of tasks (especially ones as personal as good parenting, good co-parenting, and cooperation with someone with whom one is painfully negotiating the end of an intimate relationship)? Is there "blowback" to efforts to force good parenting and co-parenting? Are professionals often more successful by helping parents slow down and discover their common interest in things like giving their fragile children the best childhood possible? And by noticing better parenting and co-parenting?
 47. Discussing a systems theory of family cases—and the ways in which professionals are inevitably a part of the systems they come into contact with. How can professionals constructively deal with that challenge? The role of calm in successfully helping the system we join. Are we helping if we're yelling? Scolding? Lecturing? Emotionally at wits end ourselves?
 48. Considering whether there is a duty to Do No Harm in the work of family attorneys and judges. What would it be? Does it include doing no harm to the natural capabilities and inclinations of parents to do well for their children?
 49. Drawing these (and other) ideas together into a comprehensively cooperative system of family law.