

November 15-16, 2014
Westin Alexandria, Virginia

Family Law Reform Conference

hosted by Divorce Corp.

WORKSHOP A

1:15 p.m. to 4:00 p.m.

© Child Custody

© Child Support

© Children's Rights

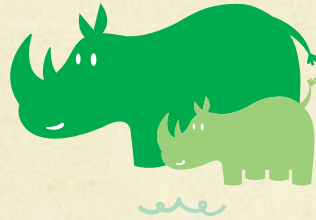
Moderators



- **William S. Comanor, PhD**

- William S. Comanor is Professor of Economics at the University of California, Santa Barbara (UCSB), and also Professor of Health Services in the UCLA School of Public Health. At UCLA, he serves as Director of the UCLA Research Program in Pharmaceutical Economics and Policy and directs a seminar on pharmaceutical economics. At UCSB, he is the past Director of the MA Program in Economics and regularly teaches a course in Antitrust Economics. He received his Ph.D. in economics from Harvard University and was a post-doctoral fellow at the London School of Economics. Prior to joining the faculty at the University of California, he was on the faculty of both Harvard and Stanford Universities. He has authored and edited 5 books and over 100 professional articles in economics; and was designated a Distinguished Fellow of the Industrial Organization Society in 2003. In addition to his academic positions, Dr. Comanor has served twice with the federal antitrust enforcement agencies in Washington, DC. He served as Special Economic Assistant to the head of the Antitrust Division, U.S. Department of Justice in 1965-66, and also as Chief Economist and Director of the Bureau of Economics, U.S. Federal Trade Commission from 1978 to 1980.

Moderators



NATIONAL ASSOCIATION
of PARENTS



○ David S. DeLugas, Esq.

- David S. DeLugas, Esq. is a parent and the Founder and Executive Director of the National Association of Parents, a 501(c)(3) non-profit charitable member association, that is the voice in the USA for all parents, mothers and fathers, married and unmarried, and that uses only the U. S. Constitution as the basis for its positions on such parents' rights issues as a child “unattended” at a playground and the drafting of parenting plans and the attendant custody issues. David is also a family law attorney, parenting coordinator, mediator and guardian ad litem. He earned his B.A. from Duke University and his J.D. from the University of North Carolina – Chapel Hill. Early in his legal career, David was with Thompson Coburn's St. Louis office and Kilpatrick Townsend & Stockton's Atlanta office. A frequent radio talk show guest on issues of parents' rights, he reinforces that parents are not required to be perfect to have the right under our Constitution to be present in his or her child's life and to decide how to raise his or her child, so long as not causing harm to the child shown by clear and convincing evidence.

GROUND RULES REQUESTS

- ◎ Objectives: identify the issues and the underlying causes (first) and then propose solutions
- ◎ Not Objectives: venting, arguing, condemning, judging, bullying, discounting, minimizing
- ◎ Methodology: share the floor, be concise (get to your point), avoid repetition, speak clearly
- ◎ Respect the Process: cell phones on silent, keep talking to a minimum (or, better, avoid side discussion all together), be considerate of others (Golden Rule), feel free to leave and re-enter, just please do so quietly

Two Paths

Make changes to the existing system where judges make custody decisions based on (we are expected to believe) on evidence, possibly including psychological evaluations and/or custody evaluations, and on the recommendation of the Guardian ad Litem

Change to a system by which custody is determined not by the judge, not a “winner” (custodial) and a “loser” (non-custodial).

Be aware of our own filters and lenses:

- If we agree or do not agree with others or they agree or do not agree with us and our ideas, let's not take it personally. That person hasn't walked in our shoes . . . And we haven't walked in theirs. Be kind.
- Studies on human behavior show that, if we do not like the proposed solution or if the proposed solution is counter to our political, religious, or other perspectives, we tend to discount or reject the existence of the problem the solution was to address. This affects our thinking here and how others, out there, receive what we want them to hear and to understand.
- It takes time to bring about changes in social policies preceded by changes in social consciousness. When it comes to OUR children, that needs to be measured in days or hours, not years or decades. Can we accelerate the process? We can try. The journey of a thousand miles starts with one step.
- The power of many. Individually, we are limited. Together, we can be strong. To use a sports metaphor, you may not agree entirely with the coach's game plan and you may not like some of your teammates of the accolades the quarterback gets when you are the interior lineman in the trenches, but so long as your TEAM wins, shouldn't you still give it your best effort?

Issues, Causes and Solutions

Custody Determinations include or consider to what degree or consider at all:

- Parenting roles and responsibilities pre-separation when others contend divorce changes everything, do consider, don't consider
- Rebuttable presumption of joint custody with shared residential parenting
- Rebuttable presumption of equality between parents or “substantially equal parenting time, responsibilities, authority and involvement”
- “Best interests of the child” statutes should have objective components rather than caveats and subjective components that allow for arbitrary and capricious decisions
- Disallow “Confirmation Bias” including the creation of the “story” by the judge, GAL, or others involved in the process to support the outcome that had been predetermined whether due to bias or other reasons
- Not “custody”, but only “parenting time” and “legal decision-making”
- Temporary Orders have as the “starting point” 50/50 parenting time adjusted only due to identified factors such as abuse, drug abuse or other issues, with the Temporary Order becoming the final order if there are no malicious behaviors during the time of the temporary order

Issues, Causes and Solutions

Custody Determinations include or consider to what degree or consider at all:

- Temporary Order to require full evidentiary hearing and not be based on affidavits and limited testimony and other evidence
- If both parents are fit and capable, then the court's obligation is only to maximize the time the child has with each parent
- If one parent wants 50% of the parenting time, the burden should be on the other parent to show by clear and convincing evidence (higher than preponderance of the evidence) why 50/50 time is not in the best interests of the child
- Only parents may be involved in custody actions and others including grandparents are not permitted until and unless a parent's rights are terminated
- Children identified as special needs only following appropriate testing with scrutiny if the label of special needs occurs only after the custody battle starts (or if there is evidence of posturing pre-custody battle), necessary to avoid use of special needs label to secure award to one parent due to presumptions that arise under such circumstances

Issues, Causes and Solutions

Custody Determinations include or consider to what degree or consider at all:

- Must avoid or prevent any anxiety or other mental health issue being labeled and punished, which discourages seeking treatment, in cases where the parent is not deemed unfit
- Take word “best” just call it “interest” of the child
- Prioritizing custody over asset division
- Annual elected 50/50 custody, can agree otherwise, but annually revisited and not binding on future years
- Each parent submits a parenting plan, so long as both parents are fit, and if the parenting plan “qualifies” by including not less than 35% parenting time for each parent (35% to 65%), and substantially equal involvement, authority and responsibility for the child or children and has no term that would cause actual harm to the child (physical or long-term emotional harm) shown by clear and convincing evidence, then the judge is restricted to picking one plan or the other, without any additions or eliminations. If there is an evidentiary hearing, it is only to show why one plan is better for the child/children, not whether one parent is the “better” parent.

Issues, Causes and Solutions.

Judges:

- Define best interest of the child sufficiently including salient features so that judges and others are held to consider them
- Educate judges as to what is best interests of the child
- social scientists know what is best for children, judges do not
- Require minimal education of judges
- Judges to be specialists in family law and social science findings
- Accountability for judicial abuse of discretion (or whatever standard is be adopted)
- Citizen board to review the judge's decision and/or to give input to the judge to be considered
- Record digitally (audio and video) all court hearing and authorize parties to publish the recordings (such as on You Tube) so that the public can see how judges treat litigants
- More transparency
- Elect judges / Don't elect judges
- Do not permit attorneys to contribute financially or otherwise support election of judges
- Only to rule on points and issues parents do not agree

Issues, Causes and Solutions.

Judges:

- Judicial reform and accountability – nothing will change until we permit motion to recuse that works, based on bias or not honoring the Constitutional rights of either parent
- No associate judges

Issues, Causes and Solutions

The process of divorce, custody and other issues:

- Speed up the process so that the court's act faster recognizing the % of time of the process in relation to the life of the child/children at issue
- Shorten the time to get temporary orders, after which the case can take as long as the particular case may require
- Accountability for others in the process including the GAL, attorneys, psychologists, custody evaluators, parenting coordinators, and experts
- GAL or CASA should have specific criteria to investigate and tasks to complete before making a report or recommendation
- The process should permit a party be *pro se* or to engage in the process without requiring significant money to be expended (to avoid the "winner" being determined or dictated by which party has more resources)
- Develop a means to uncover pre-filing posturing including alienation and financial manipulation
- Citizens' review
- Case by case basis - every individual case needs to be looked at by those qualified to render decisions
- Create a process not requiring judges (as other agreements are made without being a court order)

Issues, Causes and Solutions

The process of divorce, custody and other issues:

- Cap fees on GAL, evaluator and others
- Test parents for personality disorders and traits
- Parenting plan forms to be filled in by agreement and, if not by agreement, each parent to submit a plan considering equal time over the child's life
- A trial management report is done and gives balance and insight between the parties, to be heard the mother, father, and child, review board to ensure all those things are implemented, financial affidavit, counsel and mental health issues, will show through factual data and reveal underlying motives, to get shared parenting issue addressed
- Mediation defined properly and retired judges not used to conduct high pressure settlement conferences (or, if used, do not call it mediation)
- *Pro se* on appeal to be in writing (no oral arguments or must permit oral arguments)
- Advisory panels or juries and not judges alone
- Create Boards in each State and a National Board, rather than to court to deal with parenting plan or support, cut out the judges, administrative procedure rather than court system
- Identify when allegations of abuse or other methods are used to avoid standards or presumptions then revisit to fix what have become "loopholes"

Issues, Causes and Solutions

The process of divorce, custody and other issues:

- Move to violence and abuse allegations to criminal court or, if in family court, change standard to clear and convincing standard, rather than current mere allegations and protection ordered by judges seeking to avoid ramifications against the judge if decided incorrectly in the ex parte or hearing with preponderance of the evidence standard
- False allegations – must be taken very seriously

Issues, Causes and Solutions

Children

- Marriage or parenting contract in which the parents agree to what the parenting terms will be in the event of separation or divorce and including agreement to mediate, then binding arbitration taking cases out of court except for enforcement and family violence.
- Legal agreement upon having children (when everyone is happy and agreeable).
- Change terminology -> “custody” connotes ownership
- Change terminology -> “visitation” becomes “parenting time”
- Create an atmosphere for responsibility for being a parent
- CPS workers to be trained, educated, certified and/or licensed
- Care providers and school personnel must be educated and trained to recognize symptoms displayed by children such as school attendance, academic performance (grades), physical and mental health to provide evidence to bear on custody cases
- “Nesting” or other creation or identification of the child’s home (and home area) to prevent relocation by a parent thereby depriving the child of the relationship / meaningful contact with the parent who remains (or unilaterally forcing that other parent to move)
- Information sheet, at the moment having a child, as to responsibilities and what is good for children, parenting training

Issues, Causes and Solutions

Children

- Child's rights: family sacred, now divorce is sacred, children's hope for family act -> with the goal is to reduce divorce, if filing on grounds of irretrievably broken, must take classes, delay filing for 45 days
- Information sheet, at the moment having a child, as to responsibilities and what is good for children, parenting training
- Court must make safety of the children a priority – TRIAGE:
Emergency Application if child endangered
who would have 50.50 with an abuser by history or finding
final arbiter to decide if there was abuse or not
-

Issues, Causes and Solutions

Attorneys

- Regulate legal fees
- Cap on legal fees, based on assets of the family or not based on assets of the family
- Disbar attorneys and GALs for abuse of powers

Issues, Causes and Solutions

Support – Money - Assets

- Take non-public assistance cases and those not at risk of being public assistance cases out of the child support system with collection handled privately
- cost of raising the child cannot be variable, if no financial gain, take away adversarial process
- accountability as to child support
- recipient to have fiduciary responsibility
- Appoint CPA to review assets
- Child Support Guidelines: the assumption is that they are fair, if one makes x 2 of other parents, pays x 2 in support, money is passed to achieve this standard, to require both parents to report what is being spent on the child, through proper accounting
- Child support and Federal Funding, decouple funding from the amount collected in child support, if want to keep paying the same amount from Federal Govt to the State, fine, but not tied to collection.
- Child support is called “family support” and does not follow the child – rather, family support is paid only if the lower income parent has income and other resources below a certain level (established state to state based on cost of living) such that, if the other parent’s income and other resources are higher, an amount is paid sufficient to permit the lower income parent to have a more reliable car and live in a better neighborhood than that parent could without the support

Issues, Causes and Solutions

Enforcing Orders

- Interference with parenting time (visitation) results in definitive sanctions
- Uniformity nationally among all states for enforcement and accountability
- 3 strike law to enforce or to sanction failure to comply with parenting plans: Strike 1 - civil court, Strike 2 – criminal charge, Strike 3 – take custody
- Grounds for terminating parenting rights if not encourage/enable shared parenting
- Parental alienation: no solution in the court system to help the children and parent being alienated, serious problem to be addressed
- Timeline restriction on blocked (alienation/denial of parenting time) custody cases

Issues, Causes and Solutions

Marketing

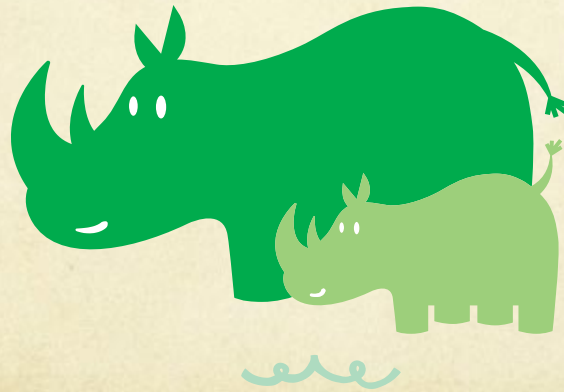
- Promote reform without using certain terms such as “equal” or “presumption” of shared parenting
- Use new labels and terminology that are more palatable to the legislators and to the masses
- Develop and promote a unified platform
- all need to be on the same page - better job getting our message across
- Identify the state or states where legislative changes are likely to be made and support such efforts
- Bar associations tend to oppose reform of family laws, insider access to legislatures, so they must be barred (pun intended) from participation in legislative process
- If mandatory bar dues prohibited from lobbying, attorneys should sue to prohibit/ stop such lobbying from forced dues
- Executive Statement – naming convention, parenting neutrality
- Platform: content management system to ferret out ideas, voting on, interaction platform, have meaningful executive and legislative action, and civil litigation, we can all stay updated,

If we had the resources, what could we do (a wish list)

- Participate in appeals by filing amicus briefs (friend of the court) to seek judicial opinions interpreting laws or striking laws that are not Constitutional and/or that, when applied, are not applied in a Constitutional manner.
- Identify judges who should not be judges and campaign to get them out of office (find someone to run against the incumbent and get that person elected)
- Use radio spots, billboards, and social media to provide information to highlight abuse of judicial power and/or abuses by attorneys
- Draft legislation and, understanding the process, lobby to get the legislation enacted, state by state, identifying the state or states most likely to well receive such legislative initiatives

Action Plan, for now!

- ① Walk the walk even if counterintuitive (turn into the skid on ice)
- ② Invite, don't demand
- ③ Get more support – people and funds – by identifying what matters to them (those other people who don't understand and might never understand)
- ④ Plug for the National Association of Parents – please JOIN for only \$19 per year, add your number to increase the impact of our collective voice



NATIONAL ASSOCIATION
of PARENTS

www.parentsusa.org