

Redefining Access to Justice for Separating and Divorcing Families

The Denver Resource Center Uses a Problem-solving, Holistic Approach

By Andrew Schepard and Rebecca Kourlis

Courts play a key role not just in dissolving a marriage but in creating enforceable rights and responsibilities for divorcing parents. When the parents cannot do so themselves, courts must resolve disputes about decision-making, access to the children, child support, and marital property and maintenance.

Accordingly, we have traditionally thought of access to justice in separation and divorce much as we do in criminal cases and tort cases: our goal is for each parent to be represented by his or her own lawyer. Indeed, the conflict-of-interest rules that govern the legal profession generally provide that a lawyer may not represent both parties in a dissolution or separation proceeding.¹ The idea is that a parent's lawyer offers advice and counsel and, if necessary, zealous advocacy to advance that parent's individual goals. Underlying that assumption is the premise that

the parties are opposed and that their best interests are not aligned.

But there are at least three major problems with this model for separating and divorcing parents.

The traditional model de-emphasizes parents' long-term common interests

The model of individual representation assumes that divorcing and separating parents are separate entities whose interests are likely to be adverse. It focuses on what divides parents in the short term rather than what can unite them over the long term. The reality, however, is that many parents today understand that they have profound joint interests in minimizing the negative effects of hostility on their children, maximizing financial resources to cover the increased costs of family reorganization, and minimizing the economic and emotional transaction costs associated with the



legal process. They want help developing a plan to deal with the problems they foresee, not prolonged adversarial negotiation or trials that drive them and their children further apart.

The traditional model's cost puts legal services beyond the reach of many separating and divorcing parents.

The expense of paying two lawyers is a barrier for many parents that often leads to not hiring lawyers at all. The poor are not represented because of limited legal-aid budgets. More recently, even middle-class couples who are separating or divorcing and not eligible for legal aid have been priced out of the market for legal services.

As a result, although the system is built around the expectation that both parties will have counsel, the legal system is experiencing a vast increase in self-represented litigants in separation and divorce. Research establishes that most parents want the knowledge, comfort, and support of a lawyer but simply can't afford one. Statistics are hard to come by and vary from state to state, but there is no doubt that self-represented parents are a majority of the litigants in our family courts. Recent Canadian research, furthermore, suggests that self-represented parents are not limited to the very poor (though they are a significant proportion) but are economically representative of the population. In other words, many self-represented litigants are "just folks" who have chosen to represent themselves because they prefer to spend their money on medical care and rent.²

The traditional model ignores separating and divorcing parents' crucial need for multidisciplinary services to facilitate reorganization of their families.

Separation and divorce place significant stress on all aspects of family life: emotional, economic, and educational. Parents certainly need access to information about the legal system that regulates the reorganization of their family. But they also need access to other professionals to cope with the challenges that family reorganization presents. For example, a significant number of middle-class parents benefit from financial planning to manage

the pressures of setting up two households. Many children may need a mental health assessment and support to deal with "acting out" in reaction to parental conflict. The parents themselves may need therapy or counseling to help them cope with feelings of anger, frustration, or even depression.

A Problem-Solving Model of Access to Justice

All these limitations don't mean we should just abandon the traditional model. There are situations, particularly when parents have to go to court to adjudicate contested claims based on legal rights, in which each parent should have his or her own lawyer. Establishment and enforcement of legal rights requires procedures consistent with due process, which, in turn, requires advocacy on behalf of an individual parent's interests to the court. Both parents should be represented, for example, if one seeks an order of protection because of an allegation of domestic violence.

Most parents, however, do not need a courtroom battle to adjudicate legal rights but rather a coordinated model of interdisciplinary services that emphasizes problem solving and planning for the future. Mediation, particularly one in which a lawyer-mediator can provide general legal information rather than representation, is a perfect procedural vehicle for them. But mediation alone may not be enough. The parties, as noted before, may need other services such as financial planning and mental health support. They may also need information about their respective rights and responsibilities as a preface to the actual mediation, particularly if they do not have counsel.³

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The Denver Center

How would such a holistic, problem-solving model for separating and divorcing families work? Would it indeed produce better outcomes for families? The best way to answer such questions is to try out the new model and systematically assess the outcomes.

In 2013, a unique multi-disciplinary Resource Center for Separating and Divorcing Families opened on the University of Denver campus. The model for the Resource Center was developed by the Honoring Families Initiative (HFI) at IAALS, the Institute for the Advancement of the American Legal System, as part of its efforts to identify changes in the divorce and separation and parental responsibility processes to improve outcomes for families.⁴ Major stakeholders (including the judiciary, the divorce bar, the ADR community, domestic violence advocates, and legal services lawyers) were consulted during the development of the Resource Center.

The Resource Center provides couples with children, married or unmarried, and their children with a range of services by qualified professionals working as an interdisciplinary team:

- *Legal education and dispute resolution*: mediation, drafting, and education on the legal process, including completing necessary forms and filing them with the court;
- *Therapeutic help*: child interviewing, co-parenting coaching, adult individual counseling, child counseling, transition support group, and discernment therapy;
- *Financial assistance*: education, assessment, planning, and financial mediation.



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Not all families need or want each service, so the process of fitting families to useful services begins with intake interviews, followed by an interdisciplinary team assessment that results in service recommendations to the parents. The parents then make the decision about the service plan, which the center staff coordinates and delivers.

The assessment and intake process is designed to identify parents who are appropriate for center services — those who value the importance of putting their children’s needs first and have basic capacity to plan collaboratively for the future. Parents are accepted for center services as a unit, rather than as individuals. They can be referred elsewhere if one or both parents have:

- no interest in collaborating or cooperating with a service plan;
- an extensive history of mental health issues;
- a history of serious substance use;
- a history of domestic violence or child abuse or neglect;
- a lengthy history of parental litigation.

The Resource Center also has a partnership with the courts, which facilitates the filing of documents and the entry of final orders after mediation. The model is designed so that families can take advantage of center services before or even shortly after filing a complaint for dissolution of marriage or for a parenting dispute. The court is notified that the case is pending at the Resource Center, and the case is assigned to the Senior Judge affiliated with the center.

The end of the center’s process involves even more significant collaboration with the court system: after center staff prepare a mediated agreement, Colorado Senior Judge Robert Hyatt holds a hearing at the Resource Center on the University of Denver campus, reads the agreement into the record, and compliments the parents for focusing on the best interests of their children by reorganizing their family through the center process — a fitting tribute from the judicial system for behaving in a socially responsible way. This is, to our knowledge, the first time in American history that a required judicial hearing approving a couple’s final divorce has been held outside a courthouse.

Evaluation

A systematic evaluation was built into the plan for the Resource Center from the outset.⁵ In all, 82 families, comprised of 164 parents and 160 children, utilized center services during its first two years of operation and were the subject of the evaluation. The evaluation, which drew on parents, staff, center leadership, and community partners, was conducted over time — before, during, and after service delivery. It included information from focus groups and individual interviews.

The result is a sophisticated evaluation report that can be summarized only briefly here.

The parents who participated in center services are generally educated; primarily lower-middle class to middle class in economic terms; employed full time; and ethnically and religiously diverse.

Parents overwhelmingly said they used the center because they felt that they would be heard and their children would be supported through family reorganization.

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Parents who participated in Center services showed statistically significant:

- decreases in depression, anxiety, and stress;
- decreases in levels of acrimony;
- increases in ability to co-parent;
- improved communication skills;
- increased confidence in co-parenting relationship;
- decreased levels of stress in terms of parental distress, parent-child dysfunction, and difficulties with children;
- positive changes in attitudes with appropriate emotional expectations of children;
- improved adaptive behaviors in children with respect to internalizing anxiety and depression.

Overall, parents rated the impact of the center on them, their children, and their family as follows:

	Good	Neutral	Bad
Child(ren)	81.7%	16.7%	1.7%
Self	85.2%	11.5%	3.3%
Family	86.7%	10.0%	3.3%

The Future

As the great humanistic psychologist Abraham Maslow noted, “[i]f your only tool is a hammer, every problem looks like a nail.”⁶ Historically, we have viewed the legal process surrounding dissolution of marriage and separation as a hammer, and we have seen adversarial court processes as the only nail in sight. The traditional model of access to justice is indeed a hammer: a useful tool to protect safety and rights but a blunt instrument that many families neither need nor can afford. The results of the Resource Center evaluation show that a problem-solving model of access to justice for separating and divorcing parents meets the needs of many families, which surely is why the ABA’s Dispute Resolution Section awarded the center its 2015 Lawyer as Problem Solver Award.

Separating and divorcing families are not interchangeable nails. Each is a unique collection of people with needs and aspirations. The center’s experience shows that many parents are willing to make

responsible sacrifices and compromises in the best interests of their children and are better able to do so if they receive education and support. Coordinated tools — mediation, education, therapy, and financial planning — help parents build a post-separation and post-divorce life for their children that reduces the risk of ongoing conflict, uncertainty, and expense that its blows can create. The Resource Center offers them that opportunity.

Will It Work Nationally?

The University of Denver community has developed a vital resource for families in transition, but questions remain about the feasibility of replicating the Resource Center on a national scale.

The center began on the campus of the University of Denver as a hub for training law students, social work students, and psychology students in interdisciplinary family law practice and for research and development in separation- and divorce-related services. As a campus-based center, it served parents and families of all income levels and created a sliding-scale fee system based on the 2012–2013 Federal Poverty Guidelines, which means it is not financially sustainable without significant subsidy. A heavily subsidized model of a Resource Center would be difficult, if not impossible, to replicate in other communities.

In an effort to become financially viable, the center has recently evolved into a nonprofit community-based model with the same core services, been renamed the Center for Out-of-Court Divorce (COCD), and moved off-campus. The interdisciplinary services



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are provided by professionals, not students under supervision. This community-based center has created package pricing for services ranging from \$1,500 to \$4,500, customized for families' needs and wants. The goal of this transition is to make the new COCD financially self-sustaining while still offering generous scholarships to families that need them.⁷

The Resource Center experience confirms that all parents do not need to be represented by their own lawyer to navigate separation and divorce. For many families, a coordinated system of service delivery in which access to legal information, mediation, and drafting is available within the context of a multi-disciplinary service delivery system that serves their long-term interests better than the traditional model. Advocates of increasing access to justice should "Go West" to Denver to get a vision of what the future can look like. ■

Endnotes

- 1 See Rebecca Aviel, *Counsel for the Divorce*, 55 B.C. L. Rev. 1099 (2014).
- 2 JULIE MACFARLANE, THE NATIONAL SELF-REPRESENTED LITIGANTS PROJECT: IDENTIFYING AND MEETING THE NEEDS OF SELF-REPRESENTED LITIGANTS FINAL REPORT (May 2013). http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/Self-represented_project.pdf. (The characteristics of the SRL sample are broadly representative of the general Canadian population. 50% were men and 50% were women. 50% had a university degree. 57% reported income of less than \$50,000 a year and 40% (the largest single group) reported incomes of less than \$30,000 a year).
- 3 Either parent can be represented by counsel on an unbundled basis. Parents may bring their own attorneys to mediation if they wish. Few of the clients at the Resource Center took that approach, but there is nothing about the model that precludes it.
- 4 IAALS is a national independent research center dedicated to facilitating continuous improvement and advancing excellence in the American legal system. For additional information on IAALS and its Honoring Families Initiative, see iaals.du.edu.
- 5 The evaluation was designed by Marsha Kline Pruett, Smith College School for Social Work; Corina Gerety, IAALS Director of Research; and Logan Cornett, IAALS Research Analyst.
- 6 ABRAHAM H. MASLOW, THE PSYCHOLOGY OF SCIENCE 15 (1966).
- 7 The Center for Out-of-Court Divorce's website is <http://centerforoutofcourtdivorce.org>.