A Brief Introduction

to the UpToParents Cooperative System of Family Law

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Since 2006 I have presented to judges from more than 250 counties on our ideas for a comprehensively cooperative family law system, one that could be counted on to serve the best interests of children, parents, and all healthy relationships in families. Perhaps the most predictable thing about these presentations has been a single reaction from many of the judges: virtually all the recommended measures should be in place in all jurisdictions, yet few are in place anywhere.

So many judges scored their jurisdictions so low that we have developed a 25-component/100-point survey form that judges, attorneys, and others can now use to assess their own family law systems. That form is available as the last Appendix to this article on the nature and means of developing excellent family law systems.

**Framing the Task**

Let’s assume that a local bench and bar believe that, absent issues of violence and abuse,¹ most divorcing parents can help themselves and their families better by cooperative problem-solving than by suing each other. And let’s also assume that the bench and bar believe they have a responsibility to help those families adopt cooperation instead of vaguely supervised warfare as their preferred method of reaching resolutions.²

This paper surveys fourteen measures of an excellent family law system. There is some modestly promising news about these measures. In the past three years two Indiana counties (Wayne and Lake) have some of these—to the substantial benefit of families and children. For an interview with Wayne Superior Judge Gregory Horn on the success of his county’s since adopting several of these measures, click HERE.

Two clarifications are in order.

First, while some commentators advocate simply removing family cases from the legal system, the cooperative options discussed in this paper assume—and set standards for—the law’s and attorneys’ continued involvement, though with substantially more focus on problem-solving and...
substantially less on legal combat. Attorneys, in addition to litigating the small number of cases where danger or other special circumstances require litigation, would have special problem-solving responsibilities when parents are in conflict. Here is a partial list.

a. Educating parents on the advantages and judicial expectations of cooperation.
b.Animating parents’ commitment to protect their children from conflict.
c. Connecting parents with necessary educational and problem-solving resources.
d. Assisting parents in reaching resolutions on a host of transition tasks, including how they will be making child-related decisions, a schedule for the children’s time with each parent and important activities, and the children’s financial support and medical insurance (to name just the few that occur in almost all cases).
e. Addressing any special needs of the parents and children incident to the separation.
f. Facilitating communication between the parents if they are not ready and able to communicate directly.
g. Strategizing with counsel on a joint plan for helping the family through the transition (whether the transition is a divorce, a post-divorce or paternity issue, or even reconciliation).
h. Communicating with counsel to solve issues without unnecessary filings and hearings.

Second, cooperative law needs to be distinguished from collaborative law. Collaborative law is a term of art describing processes under the four-way contract pioneered by Stu Webb whereby the parents and their attorneys privately agree (1) to a no-court process, (2) to honesty and transparency in the exchange of discoverable information, and (3) to the mandatory and permanent disqualification of the collaborative attorneys should anyone seek a ruling from court. Cooperative law, on the other hand, is a term describing any processes focusing on relationship-building, child interests, and problem resolution. One great payoff of a cooperative system is that while collaborative law touches a privileged few (those lucky enough to know of it, agree to use it, and have collaborative-trained lawyers available to them), cooperative law can serve everyone in any family case.

Without necessarily using the term, the best family attorneys and judges have always been “cooperationists.” While the processes of collaborative law are contractually driven, the bar and especially the bench must drive cooperative law.

Five Features of a Cooperative Family Law System

I believe five features characterize a system of cooperative family law.

1. Respect for parents and their role as primary problem-solvers. Cooperationists know that separation, divorce, and other difficult family transitions must be about more than resolving custody, child support, and property issues. Children’s and parents’ wellbeing will be determined by a host of parent practices beyond the effective reach of court orders: the

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3 Broad, large-scale involvement of the legal system, of course, should not be the goal in the case of families not in conflict. More attention should be paid to Forrest Mosten’s ideas on unbundling legal services so that families receive the legal help they need, but not the excessive immersion in legal processes that lead parents into believing that they can best solve their problems by resort to their legal claims against each other.
way the parents make a priority of their children’s needs, relate in front of their children, support the children’s relationships with both of them, share information, make decisions, and deal with their grief and hurt. The parents’ choices about each of these will have the greatest say in how the family members fare, yet each is beyond any effective judicial control. What is more, the parents will have thousands of future decisions to make, all on matters unknowable during the pendency of the legal proceedings.4

A growing number of lawyers and judges know that success in divorce is not a matter of maximizing the number of motions filed, ruled on, or “won.” Upon reflection and discussion, most will also realize that a good synopsis of success in family cases is the extent to which parents have shifted their focus from their resentments with each other and the past to their children’s needs and the future. Put simply, the parents’ focus will be the dominant determiner of the quality of outcomes.

The respect due to parents involves one more thing: awareness that the most promising healing influence available in most families is parents’ willingness to sacrifice mightily for their children. I believe my experiences with parents match those of other family law professionals: when given help to slow down and reconnect with their common interest in

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4 Outcomes for parents and their families are rarely good when they cede problem-solving responsibilities to courts. Contested family cases often deteriorate into what the law otherwise recognizes as the futile business of trying to compel (or, as the law states, specifically enforce) personal services. American jurisdictions uniformly concur that attempting to compel someone to perform a personal service is such a clearly doomed undertaking that courts are prohibited from trying. See, for example, Board of School Trustees of South Vermillion School Corporation v. Benetti, 492 N.E.2d 1098, 1102-03 (Ind. App. 1986) and Smith v. General Motors Corp., 128 Ind. App. 310, 143 N.E.2d 441 (1957).

Ancient cases from my jurisdiction underscore the futility of “You-better-or-else” orders in family circumstances. Courts have wisely reasoned that they cannot sensibly order persons to keep promises to attend to the needs of a disabled person (Ryan v. Summers, 81 Ind. App. 225, 142 N.E. 879 (1924)) or to “make a home” for an elderly relative (Hoppes v. Hoppes, 190 Ind. 166, 129 N.E. 629 (1921)). Some language in Hoppes is instructive for us today:

> It is obvious that the court would have no means of compelling [the son] and his wife during the remainder of [the father’s] life to perform all those intimate services due from a son and daughter-in-law which are implied by the undertaking to make a home for the father and to care for him. Hoppes, 129 N.E. at 630.

In that separated and divorced parents must “make a home and care” for their children, including in the thousands of acts of peace-making, personal accommodation, and gentility courts can never supervise, the law must respectfully support that co-parenting relationship, not vainly seek to impose our authority on parents.

In fact, the attempt on the law’s part to micromanage parents’ interaction into gentility and civility can recall an old legal story.

Mrs. Johnson brought suit against Mr. Wolmacks for slanderously referring to her as “a pig.” The court found against defendant Wolmacks, fined him $10, and ordered that he not again refer to Mrs. Johnson as a pig.

> “But what if she is a pig?” asked Wolmacks.
> “It would make no difference; it would violate my order, and you would be further fined,” responded the judge.
> “Well, may I refer to a pig as Mrs. Johnson,” asked the defendant.

After some thought, the judge announced, “That would be no concern of the law, and you may refer to a pig as ‘Mrs. Johnson.”’

The defendant obligingly turned to the plaintiff and said, “Good morning, Mrs. Johnson.”
building peace for their children, most parents rise to the challenge, often heroically. Cooperative measures in family law will build on parents’ protective inclinations and, equally important, avoid distracting parents from those inclinations.

2. Commitment to good relationship outcomes, not just good legal outcomes. Except in unusual cases (abandonment, death, or domestic violence or abuse), parents will need to parent and solve problems together. I’m indebted to Dr. Timothy Onkka for his observation that in counseling with separated and divorced parents, he considers his true client to be the future parenting relationship. (I have shared Dr. Onkka’s observation with a number of other capable psychologists and counselors. Interestingly, their uniform response has been that nothing but the parenting relationship could possibly be “the client” when working with separated or divorced parents.) I think this orientation is worth serious consideration by all family judges, attorneys, and mediators. Neither parent nor child interests can be served without protecting and, where necessary, improving the co-parenting relationship. Processes that embarrass or polarize parents must be heavily disfavored—even if those processes might facilitate a judge’s decision.

3. A mutual duty of cooperative problem-solving and helping the family to work. In a system of cooperative family law, parents and attorneys function as co-problem-solvers rather than mere problem-reporters—combatants who stake out positions, submit evidence and arguments, and defer to courts to make decisions on matters parents should have resolved. Judges should be confident that attorneys (and, as much as possible, parents) are consistently functioning as co-problem-solvers; attorneys should be confident that courts will permit only those processes that assist problem-solving; and parents should be confident that they will not be subjected to destructive examinations and attacks. In a cooperative system the professionals do not automatically have conflicting duties (for example, father’s attorney’s duty being to father and mother’s attorney’s duty being to mother). All professionals have a common duty—helping the family to work. And this common duty as observed by professionals should serve as a model for the parents as they build courteous cooperation between them.

4. The availability of—and judges’ commitment to use—responses other than mere court decisions or custody evaluations. To avoid unintentionally luring parents into the

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5 Some 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.” Professor Seymour “Sy” Moskowitz of Valparaiso University School of Law adds a similar caution: “The real custody fight starts immediately following the court’s custody decision.”

Assuming judicial rulings will solve parents’ dilemmas overlooks three realities. First, the parents’ stated issues (for example, how the children’s time and care will be divided by the parents, how parenting decisions will be made, how the children will be raised and schooled, how the parents will end conflict and give their children a good place to live their one and only childhood, even why support is overdue) are rarely either legal ones or amenable to judicial resolution. (I’m indebted to Japanese District Judge Hiroshi Ohno who after a morning-long trip with me to about a dozen family hearings in our county shared that he’d not seen one legal issue, nor a single controversy that
role of problem-reporters inept at finding their own solutions, judges must have, and make regular use of, problem-solving resources other than mere judicial rulings. Some of those options include:

a. an effective strategy (likely a combination of a rule, a judicial pamphlet, and a simple website) to educate parents on the advantages and judicial expectation of cooperation,

b. an effective strategy (likely a rule plus status conferences and regular inter-professional meetings of the sort described in paragraph 14 below) to educate attorneys on their duty of cooperation,

c. referrals of parents to complete UpToParents.org (for divorcing and divorced parents), WhileWeHeal.org (for married couples remembering their children as they work through marital problems), and ProudToParent.org (for never-married parents),

d. excellent co-parenting classes (including a basic class for parents in divorce cases, a basic class for parents in paternity cases, a multi-session class for parents in high- or prolonged conflict, and a class for survivors of domestic violence who may not be appropriate candidates for other classes.

e. individual and co-parenting counseling,

f. status conferences to gather counsel’s ideas and enlist their energies toward cooperation,

g. addressing parents in court about the true mutuality of their interests, the powerlessness of the court to make their family work, the parents’ chance (unavailable to the court) to build solutions, etc.,

h. inviting litigating parents and their counsel to speak and submit proposals for building cooperation instead of merely appealing to the court,

i. mediation referrals, and

j. parenting coordinator appointments in problematic cases.

would even be heard by a Japanese judge.) Second, parents who appear in court rarely even have the problem they claim; their true problem, correctly understood, is that their parenting relationship has collapsed and that they’re destructively focused on their resentments and the past instead of their children and the future. Third, the very process of being in a lawsuit against each other, let alone one whose subject matter is so emotionally taxing, mires parents in what Dr. Timothy Onkka calls a hopeless “borderline process” where blame is projected onto the other parent and helpless purity is claimed for oneself.

6 See Appendix H for a sample of the kind of order some courts have used to help parents reassume responsibility only they can discharge.

7 Custody evaluations are intentionally not among these options, and for a simple reason: they are not designed to promote improved parental cooperation or functioning, and they almost always have the opposite effect. Sadly, their use in most jurisdictions is not limited to cases of irreversible parent conflict or dangerous circumstances where educational and counseling measures would not be effective. We join those researchers and commentators who recommend reserving evaluations to those extreme cases only. See, for example, Kelly, Joan B., and Johnston, Janet R., “Commentary on Tippins and Wittmann’s ‘Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance,’” Family Court Review, Vol. 43 No. 2, April 2005, 233; Emery, Robert E., Renegotiating Family Relationships, New York: The Guilford Press, 107; Tippins, Timothy M., and Wittmann, Jeffrey P., “Empirical and Ethical Problems with Custody Recommendations:
As a general proposition, cooperationist judges can be described as operating more on a case management style than a mere adjudicatory model. They decide matters when they must, but even then they consistently return responsibility—with clear expectations and necessary resources—to parents, the only persons who can actually give themselves or their children a good result. These judges’ effectiveness actually expands because they do not confuse force with effectiveness; they know their effectiveness derives from processes other than vainly issuing rulings in hopes of ordering a family into safe and cooperative interaction.

These judges also recognize that they cannot await attorneys’ requests for their clients to be ordered into appropriate processes like high-conflict classes and mediation, since very often attorneys have no permission from combative clients to request such court action.

The system must avoid the time-honored practice of permitting clients, children, and entire families to be devastated by revolving exposure to motions and hearings. Few observers believe that prospects for cooperation survive even one or two adversarial hearings. Referrals to mediation and high-conflict classes must not, as is too often the case, await repetitious appeals to court. I find persuasive the opinion of Beth Kerns, the Director of our county’s Domestic Relations Counseling Bureau, that all couples making a second appearance in court should be in either an extended co-parenting class or mediation, or both. I’m further impressed by the practices of the attorneys who have their clients in such classes even before any court appearance. These attorneys may seek an agreed court order that will hold parents to the requirement of finishing their classes, but they don’t await courts’ spontaneous decision to refer parents to the classes.

5. A true standard of care for professionals. In a system of cooperative family law, professionals are accountable to satisfy specific standards of cooperation, courteous communication, and problem-solving that will serve the best interests of the clients and other family members. For example, attorneys must consult with each other before filing nonemergency matters to see if private resolutions are possible. Attorneys are not free to choose unnecessarily destructive actions any more than physicians are entitled to perform dangerous surgeries that are outside the applicable standard of care in their specialties.

It is, or at least should be, a source of considerable professional embarrassment that the system of family law in America operates with no real standard of care. If an attorney wants to see good family functioning as a goal and use processes, language, and resources in

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8 Courts’ ability to persuade parents and counsel to higher functioning recalls this famous observation from Booker T. Washington: “Few things help an individual more than to place responsibility upon him and to let him know that you trust him.”
furtherance of that goal, the system accepts that orientation. Regrettably, though, the system is just as accepting of another attorney’s practice of making every divorce and family case into a bitter contest, taking every family to court, and modeling interaction that no one should hope the family adopts. Sadly, most jurisdictions are without established standards to declare one of these approaches in any way preferable to the other.

The Professionals Corner link of UpToParents.org has a sample model rule for implementing a system of cooperative family law, but I suggest delaying consideration of that model rule in favor of considering the list offered below of various cooperative measures that might work in a particular jurisdiction. Rule drafting can follow from that.

One last caution. Any candidate measures should be evaluated based on their likely success in helping parents reduce conflict, build cooperation, and protect children, an evaluation possibly more demanding than it looks at first blush. In separate articles, Deborah Berecz of St. Joseph, Michigan9 and Susan Zaidel of Haifa, Israel10 put words to a wise concern harbored by many judges and lawyers: that merely adding more family law programs does not necessarily help families. Between them, Berecz and Zaidel mention an impressive range of initiatives undertaken in recent years to help families in conflict:

- expanded guardian ad litem programs,
- special attorney masters,
- parenting coordinators,
- family courts,
- family divisions,
- friend of court offices,
- attorney-referees,
- early neutral evaluations,
- broader use of custody evaluations, and
- many more measures.

What Berecz and Zaidel find missing is any sign that these measures have improved service to or outcomes for families. Ms. Berecz wisely laments that, “It occurs to me that we continue to add services and programs and professionals to the family litigation system without asking why all these things are necessary.” Both authors conclude that the core problem is the adversarial “dispute foundation” of so much family law. Berecz and Zaidel conclude (1) that withdrawing from present practices that polarize and “forensify” families is as important as adding new programs and (2) that only those new initiatives standing to help parents reduce conflict, build cooperation, and protect children should be adopted.

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Fourteen Promising Measures Supporting a Cooperative Family Law System

We think 14 cooperative measures deserve every jurisdiction’s serious consideration.

1. Replace unnecessary divisive language in case captioning and pleadings.
2. Use multiple media to communicate the advantages and judicial expectations of safe cooperation.
3. Refer parents to UpToParents.org (or, in paternity cases, to ProudToParent.org) and an excellent basic co-parenting class.
4. By rule and practice, require that both parents and counsel observe courtesy, safe cooperation, and focused attention on children’s needs.
5. Continually develop and use problem-solving alternatives to litigation.
6. Require, whenever reasonably possible, pre-motion problem-solving consultation.
7. Require motions to report on the specifics of that pre-motion consultation and the history of litigation in the case.
8. Require litigating parents to bring their completed website work and parenting plans (or parenting plan proposals) to hearings.
9. Adopt and use a Family Attorneys’ Pledge of Cooperation.
12. Set trials and custody evaluations only after exhaustion of problem-solving measures.
13. Develop a plan for sensibly handling pro se case.
14. Hold brief judge-led monthly meetings (possibly luncheons) of a Family Law Cooperative of all family professionals.

1. Given the powerful effect of professionals’ language on distraught and stressed parents, the law could replace unnecessary divisive language with language conveying at least a neutral, rather than adversarial, relationship between the parents.

Cases could be captioned (and parties designated) in ways that better convey everyone’s duty of cooperation. Parents could be designated as “mother” and “father” (or as “putative father” in paternity cases pending the finding of paternity) instead of “petitioner” or “respondent.”

Under no circumstances should “versus” language be inserted between participants’ names.

Form pleadings should be reviewed for all these miscues, starting with summons forms. Many jurisdictions use form divorce summonses declaring things like, “You are hereby notified you have been sued by the above-named Petitioner for Dissolution of Marriage.” If the law’s goal is

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1 The polarizing “petitioner-respondent” language in use in many no-fault jurisdictions poisons the very purpose of no-fault legislation. For example, in Indiana, IC 31-15-2-4 provides that dissolution actions be “commenced by the filing of a petition entitled, ‘In Re the marriage of ________ and _________,’” and actually was enacted as part of the state’s adoption of a no-fault divorce system. But, courts and attorneys in most Indiana counties (probably out of sheer habit) eventually reinserted “petitioner-respondent” language into the captioning of the parties. Commendably, the St. Joseph (Indiana) Probate Court has abandoned all “petitioner-respondent” language in favor of captioning parties as “mother,” “father,” and “putative father.”
to help families to function, every commitment should be made to sanitize pleadings of such polarizing and “forensifying” terminology. This would be an uncommonly helpful initiative for local bar associations.

Appendix A is a suggested divorce summons form.

2. The jurisdiction could use four tools to give parents basic guidance about the advantages and judges’ expectations of safe cooperation—and the resources available to parents to meet those expectations:

   a. short judicial pamphlets on divorce, paternity, guardianship, delinquency, and other family cases (see Appendix B and this link to Sample Court Pamphlet),
   b. an easily navigated website like the model at FamilyCourtWebsite.org,
   c. television and radio public service announcements (samples of these public service announcements are available on the “Others Resources” link of FamilyCourtWebsite.org), and
   d. a combination of short videos (ranging from two to eight minutes) of judges to be (i) watched by parents, (ii) played at divorce education classes, and (iii) uploaded on the court’s website.\textsuperscript{12}

The sample website at FamilyCourtWebsite.org is intentionally simple and clean. It features a homepage announcing the judges’ commitment to cooperative processes in family cases and the following links:

- Judges’ Welcome
- Judges Speak to Parents
- Stopping Violence and Abuse
- Local Cooperation Rule in Family Cases
- Parenting Plan Worksheet
- Other Resources.

3. Parents in divorce and paternity cases could be referred for mandatory website work (UpToParents.org for divorcing and divorced parents and ProudToParent.org for never-married parents) and a short co-parenting class, and could be encouraged to fill out a Parenting Plan Worksheet of the sort attached as Appendix E.

This website work is a powerful opportunity for parents to defocus from their grievances with each other and the past and refocus on their children’s needs and the future. The primary exercise on the website is each parent’s opportunity to choose from several child-focused commitments he or she pledges to observe. Once each parent completes the work, the website can merge their chosen commitments into a set of Agreed Commitments they both chose. (The best way for professionals to understand the power of this personalized and interactive tool is to sign on as a hypothetical parent and try the website.)

\textsuperscript{12} The videos on FamilyCourtWebsite.org include ones about divorce, paternity, delinquency and other cases. A jurisdiction might find it useful to require attorneys to watch and discuss the video with their clients and confirm that discussion in their entries of appearance.
Numerous class trainers and presenters have observed that this website work is a powerful tool to prepare parents for their co-parenting classes.

"UpToParents sets the focus squarely on children and their needs. Most parents who do this work actually arrive eager to learn more about helping their children. It’s truly ingenious and transforming.” Ann M. Schelle, MS, LPC, National Coordinator and Trainer, TransParenting Program.

“Probably all co-parenting instructors say they wish they had more class time with parents. Our class has found an answer in this website work. By doing that work before class, almost all our parents arrive with a deeper appreciation of their children’s fragility and the need to build peace and cooperation for them.” Rozi Wax, LMFT, LMHC, Lincoln Therapeutic Partnership.

“Without question, the single most important thing parents can do to prepare for our divorce adjustment classes is to complete UpToParents.org. We’d never again write or teach a co-parenting class without this parent preparation as a component.” Dr. Michael Sheehan, Child Advocates in Divorce (CAID).

Effective referrals to this website opportunity consist of:

a. a simply worded court rule,
b. a colorful welcoming letter from the co-parenting class facilitators (see Appendix B),
c. pamphlets like those discussed, and
d. a video-based website like FamilyCourtWebsite.org.

The short co-parenting classes (we recommend separate ones for parents in divorce cases, paternity cases, and in cases with any history or risk of domestic violence) should obviously be excellent. They should be visited and evaluated at least once every two years by a committee of legal and counseling professionals. We think it essential that there be a separate class for victims and survivors of domestic violence and an excellent mechanism for identifying those persons and individuals. (The messages about open communication, cooperation, and accommodation that are typical in most co-parenting classes may actually be counterproductive and dangerous in cases with histories or current risks of domestic violence.)

Early parent attendance is critical, as patterns of thinking and interaction are often set in the early “meaning-making” stages of separation and divorce. A requirement that parents merely attend a class sometime before their divorce is granted is substantially less effective than a requirement of early attendance.

4. By rule and daily practice, courts could communicate their expectation that attorneys and parents consistently observe safe cooperation, courtesy, and focused attention on children’s
needs. This commitment must be further reinforced by judges’ and attorneys’ ongoing discussions within the Family Law Cooperative discussed in paragraph 14 below.

A sample rule is available HERE and on the “Professionals Corner” link of UpToParents.org. Special note should be made of the rule’s invitation that attorneys work even before suit is filed to build a culture of cooperation in family cases.

5. Judges must have—and make liberal use of—options other than mere hearings, custody evaluations, and rulings.

Some uncommonly effective judges have liberated themselves from the merely reactive business of allowing any and all motions to be filed and then ruling on whatever lands in court. These judges recognize their role as educators of parents and of attorneys and as developers of resources that can help families function during difficult transitions.

The development of good multi-session classes for couples in prolonged conflict deserves special mention. We believe courts should have a well-communicated protocol sending parents with prolonged conflict to such classes. Referrals would have to be specifically fashioned to families’ needs in the cases of abuse and violence. In only the rarest cases, however, should parents experience more than one or, at the most, two hearings before being sent for help, and the bench and bar should develop the practice of detecting high-conflict cases to be sent even earlier. Jurisdictions could usefully consider implementing a protocol that, upon a second or third hearing, sends parents either (a) directly to such a program or (b) to a quick screening on whether the parents are likely to solve future issues without the need of such a program.

Courts should certainly abandon the practice of entertaining serial hearings without referring parents to resources that could help them. One case in my mediation experience had been the subject of over 40 hearings before its first referral to any sustained nonlitigation alternative (counseling, parenting coordination, a high-conflict class, etc.). Courts and attorneys must develop a fuller appreciation of the unseen problems in families seeming to litigate even a handful of issues. Experience teaches that parents who are litigating holiday schedules, pickup times, and children’s summer activity schedules are most likely in panoramic child-injurious conflict.

6. Except in instances where it would be dangerous or otherwise unreasonable to do so, before filing motions counsel (and pro se parties) could be required to have a consultation on six matters:

a. an attempt to resolve the matter at issue;
b. a discussion of the resources the parents could use to improve their co-parenting relationship and to resolve current and future issues;
c. confirmation that the parents have completed, and will be bringing to any upcoming hearing, their Agreed Commitments from their website work;
d. confirmation that the parents have completed their co-parenting class, and
e. confirmation that the parents have completed, and will be bringing to any upcoming hearing, a completed Parenting Plan.13

Counsel and pro se parties could also be required by rule to cooperate in responding to contacts to hold such consultations, and the duty of cooperative consultations and problem-solving should be continuing through the time of any hearing.

7. Motions could be required to include a Cooperation Update on those five matters—and on the number of prior hearings set, their dates, and the subject matter of each.

Samples of conforming motions are attached as Appendix G. As attorneys become accustomed to this problem-solving role, no more than a few minutes should be required to include a Cooperation Update in a motion.

8. Parents could be required to review their completed website work and Parenting Plan before, and bring them to, all hearings.14

9. The bench and bar could develop, regularly discuss, and use a Pledge of Cooperation for Family Attorneys such as that attached as Appendix F.15

13 The law has a perfect precedent for this consultation requirement. For years in both federal and state courts, counsel have been required to consult personally before filing any pleading in a discovery dispute. Those of us old enough to remember the near-daily diet of discovery motions that once clogged our courts can attest to the efficacy of this simple rule. Yet a far more important consideration than court congestion commends the adoption of this parallel requirement in family cases: unnecessary hearings, even ones that seem to professionals to go smoothly, brutalize parents and parenting cooperation.

14 Couples’ Agreed Commitments from the website are singularly powerful tools. Not only can they show parents that most of their best interests are ones they hold in common, but they can be used by judges to help parents understand that their real problem is that their co-parenting relationship is just not working. In less than two minutes judges could ask parents if they really chose some of the core Agreed Commitments:

1) “We remember that this is Jessica’s one and only childhood” (#1),
2) “This one and only childhood is forming many of the gifts and problem she will carry into adulthood” (#2),
3) “We realize that conflict between us (her parents) can bring many bad things into Jessica’s life, including blaming herself, fear and depression, hiding her feelings, failure in school, etc.” (#4), and,
4) “We recognize that Jessica will experience any attack between us as an attack on her” (#6).

Judges, of course, must find what fits their own voices, but here is one essential message that can come from the bench: “Mr. and Mrs. James, it’s obvious that you’re not doing what you said you wanted to do—and that the real problem is that you don’t have a co-parenting relationship focused on meeting Jessica’s needs. I’m directing that you work with your attorneys and report back here in one hour with your ideas on where you can find the help to give Jessica what she needs.”

Parents’ Agreed Commitments should be available at every hearing in a family case. Having been adopted by the parents themselves, they’re a uniquely powerful resource.

15 The Pledge attached as Appendix F was developed (and has now been signed) by over 50 family attorneys in our modest-sized community. Those attorneys are living testimony to the readiness of bars to follow when a quality family law system and standard of care are laid before them. A few destructive gladiators may speak loudest, but they most definitely do not speak for all attorneys.
10. The Courts could hold routine Cooperation Conferences about 60 days into each case to hear counsel’s suggestions for helping families cooperate and function better.16 (I’m indebted to Judge Lorenzo Arredondo of the Lake (Indiana) Circuit Court for recommending the name “Cooperation Conference” over the legalistic “status conference.”)

11. While not every case will require formal discovery, a rule could provide the terms of a standard discovery order on matters of finance and property.

12. Requests for trial settings and even custody evaluations might be required to account for past and future problem-solving alternatives to trial.

Clearly, adversarial processes are highly suspect forms of problem-solving. Just one of their leading unintended consequences is that they usually involve badly damaging the vital co-parenting relationship for the sake of possible resolution of an isolated issue. The legal system would provide better assistance to families if it looked on every court appearance as a likely “system failure.” The system failure might be (1) that of the family due to parents’ dangerous conflict or refusal to resolve parenting issues or (2) that of the law itself. But almost never is the stated issue the real issue, and almost always reliance on adversarial processes leaves parents with less cooperation between them and less inclination to use resources that could assist their co-parenting.

Regardless of how one comes down on assigning blame, there is no doubt that the law needs to do more to correctly understand parents’ issues and refer them to processes that stand to resolve them. This should absolutely require (a) that trials not be scheduled until all nonadversarial measures have been exhausted and (b) that a parent or attorney requesting a trial date be required to recount all past problem-solving processes and show that any processes not yet used would be ineffective.

16 Judges who enlist family attorneys as co-problem-solvers report strong compliance and effectiveness on the part of the attorneys, a finding parallel to my experience with counsel in my mediation work. Note the following observations from Legal Interviewing and Counseling, Thomas L. Shaffer and James R. Elkins (St. Paul, Minn.: West Group, 1997) about Alfred Kinsey’s ability to elicit honesty on the most delicate topics:

The most fundamental fact about the Kinsey style, a fact relevant for lawyers, is that Kinsey asked people to help him. He did not pay them for their information; they talked to him readily and for free. . . . Kinsey’s interviewing and his ability to get people to help him were premised on the regard he expressed for those he asked to help him; not only did he respect these people, he was fond of them. Id., at 111.

A historical analogy may help in understanding this judicial recruitment of lawyer energies to cooperation. On September 2, 1957, Governor Orval Faubus mobilized the Arkansas National Guard to prevent the integration of the public schools in Little Rock. President Eisenhower passed on some of the finer nuances of federalism and negotiation: he federalized the Arkansas National Guard, charging it to facilitate and ensure the very school Governor Faubus opposed.

Family law cases cry out for attorneys and parents to be deputized as problem-solvers. According to Westlaw, Indiana statutes refer approximately 95 times to the “best interests of children,” usually as the mandatory focus for a variety of court decisions. But none of the 95 requires attorneys, or even parents, to adopt children’s best interests as their guiding light. My experience tells me that more and more parents and attorneys genuinely want judges to recruit them to this child-focused problem-solving.
Exhausting problem-solving efforts (or at least showing that those efforts would be inappropriate or ineffective), we believe, should also precede custody evaluations. In our view, custody evaluations can be as destructive of child interests as trials. They can be just as likely as trials to poison interparental cooperation, and involve children in interviews saddling them with felt responsibility for the conflict.

At least one jurisdiction agrees. Steuben County in Indiana (home jurisdiction of past-AFC President William Fee) has enacted court rules including the following.

In all proceedings involving custody or parenting time of children, this rule shall require the parties to first utilize cooperative approaches to resolving the dispute, prior to adversarial proceedings. Steuben County DR Rule 3(A).

No custody evaluation may be conducted, ordered by the Court or requested by any party unless and until all cooperative approaches, such as mediation, have been exhausted. Steuben County DR Rule 4(D).

13. A jurisdiction should carefully examine the needs of pro se parents and establish processes making their cases as healing as possible. Jurisdictions’ experiences with pro se cases vary widely, so no single plan can be offered here. However, these cases likely would be helped by many of the measures offered in this paper: the website work, good co-parenting classes, clear notice to parents of the judicial expectation of cooperation, and publication of lists of helpful family resources, to name a few.

a. The jurisdiction could invite the bench, bar, program directors, mediators, and counseling professionals in any county to join a Family Law Cooperative (FLC) for monthly meetings (a) to accomplish this shift away from an adversarial rights model to a cooperation model and (b) to continue developing the best possible resources to assist families going through divorce. Judges’ regular attendance and participation as contributing speakers would be essential, and they should use their bully pulpit to promote the attendance of all family attorneys. Meetings could feature presentations and discussion on the broadest range of topics, including these Suggested Topics for Family Law Cooperative Meetings.

One quietly dynamic plan—one I find nearly irresistible—could be for the family law professionals group to meet for a monthly breakfast or lunch seminar, with an extra hour of court left open to accommodate the meetings. Judges could send a singularly powerful message about their dedication to cooperative practices by helping to lead one-hour monthly cooperative family and canceling court for one hour on those days. CLE and CEU credits should be guaranteed for the attorneys and counselors who attend.

**Concrete Steps to Implementation**

Experience teaches that counties making progress in creating cooperative systems of family law have had uniformly had the benefit of good judicial leadership. To that one indispensable asset, two other tools might be added.
First, attached as the last Appendix to the paper is a 25-component survey of features any good family law system arguably should have. Bench and bar associations are encouraged to work from that survey to evaluate where progress is needed in any jurisdiction.

Second, a structure of some active well-organized committees is important for examining reforms and making recommendations. The following five committees seem important.

1. Public Education Committee (responsibility for a court website including especially its messages on the advantages and judicial expectations of safety and cooperation in all family cases, pamphlets on each important area of family law, training of clerks in the assistance of pro se parents, public service announcements, and all other ideas on bringing these messages to the public as a whole).

2. Parent Education and Problem-Solving Resource Development Committee (responsibility for the development and regular review of the three basic classes discussed in measure #3 above, a Level-II class for parents in prolonged conflict or otherwise needing extra education, parenting coordination, counseling, any other assistance believed effective in the particular jurisdiction, and good protocols for effective identification and early referral to all these resources).

3. Interprofessional Exchange and Education Committee (responsibility for monthly family law cooperative meetings, an annual conference, and other vehicles for professionals’ improved service to families in crisis).

4. Rules Committee (responsibility for drafting, eliciting and considering comments on drafts, and enacting rules helping to give the architecture to an excellent family law system; the UpToParents Model Rule may supply useful early guidance). Experience has taught that an effective Rules Committee must be mindful that what they are considering and drafting will, in many respects, be revolutionary. Specific guidance, including by inclusion in the rules of model motions, will be essential.

5. Domestic Violence (responsibility for good co-parenting education for victims and survivors of domestic violence, screening of parents for referral to the class fitting their circumstances, ensuring prompt and competent assistance in securing necessary protective orders, consulting about the focus of courts’ pamphlets and websites, and advising about professionals’ education).

**Conclusion**

Two final observations are in order. The first is much more practical and less sentimental than it may sound. Parents do best for themselves and the entire family when they pursue what is best for their children. Parents who build peace and cooperation for the sake of their children will virtually always save money, move out of a destructive focus on the past and into a constructive focus on the future and, of course, enjoy the satisfaction of saving their children. In the confusing business of developing an alternative to the system of adversarial family law,
professionals’ focus on children’s interests, we think, can be just as valuable.

Second, our foundation believes that the bench and bar have no higher calling than making a systematic and ongoing commitment to civilizing family law practices. See the “Attorney as Healer” article on the “Professionals Corner” of UpToParents.org. The adversarial family practice rarely serves the public’s interest, and it should yield to the law’s obligation, as a largely self-governing, to “regulate itself in the public interest.” Preamble to Rules of Professional Conduct. And given that the “ultimate authority over the legal profession is vested largely in the courts,” id., it is no wonder that we hear judicial leadership consistently cited as the one essential ingredient to restoring the problem-solving function of family law.

Courts interested in this challenge should be reassured to know that growing numbers of attorneys will follow the lead laid before them by client-conscious courts.

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17 The “Attorney as Healer” article attached as the last Appendix to this article includes authorities ranging from the Model Rules of Responsibility to Lincoln, from Gandhi to Chief Justice Warren Burger, all showing that cooperationists’ initiatives are the furthest thing from an abandonment of the law’s true purpose. They’re the fulfillment of that true purpose.
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Appendix A: Sample Solution-Focused Divorce Summons

STATE OF ____________ )  __________________ COURT
COUNTY OF__________ )  SS: CAUSE NUMBER:

IN RE THE MARRIAGE OF )

, mother,
AND
, father.

Your spouse has petitioned for dissolution of marriage (commonly called a divorce). We, the Judges of Streeter County, share the following information so you will know of our commitment to protect the best interests of children and all family members in divorce cases. Please read this information carefully, as we expect you and all other persons involved in your case to be partners in serving those best interests.

1. You may proceed with or without an attorney. Either you or your attorney should file an appearance with the Clerk within 30 days to ensure that you receive notice of all motions, hearings, and orders.

2. As soon as possible, visit FamilyCourtWebsite.org to learn about the Courts’ expectations for how divorce cases will be handled to:
   ▪ ensure safety,
   ▪ reduce conflict,
   ▪ build cooperation, and
   ▪ protect the best interests of all family members, especially all children.

3. If you and your spouse have any children under the age of 20, you must do the following within 30 days:
   a. Contact the Domestic Relations Counseling Bureau (DRCB) at 800 County-City Building, Streeter City (574-235-9661) to register for a 4-hour co-parenting class.
   b. Complete the work on UpToParents.org and take that work to your assigned co-parenting class.
   c. If there will be no attorneys in your case, see the “Cases Without Attorneys” link on FamilyCourtWebsite.org or the DRCB for special work required of you.

4. Read the Streeter County Rule for Cooperation in Family Cases (available from DRCB or FamilyCourtWebsite.org) for additional important information on the Courts’ expectation that everyone involved in your case will be a partner in ensuring safety, reducing conflict, building cooperation, and protecting children.
Appendix B: Court and Co-Parent Class Referrals to UpToParents.org and ProudToParent.org

GENERAL ORDER/RULE FOR CHILD-FOCUSED WORK IN MARRIAGE DISSOLUTION AND SEPARATION CASES

Commonly the best predictor of how parents themselves will do in dissolution (divorce) cases is how focused they are on their children’s need for parental cooperation to replace conflict. In order to serve the best interests of all concerned, courts, attorneys, and parents shall conduct themselves in ways that reduce conflict, build cooperation and protect children. In furtherance of those ends, the Court orders as follows:

(1) If parties in a dissolution or separation case have no children under the age of twenty (20), each shall within thirty (30) days of the initial Petition file a statement reading in substance, “__________ now confirms that the parties have no minor children together.” (See Footnote 2.)

(2) The remaining requirements of this Order [Rule] shall apply in all dissolution and separation cases where the parties have one or more children under the age of twenty (20) at the time of the initial Petition. Within ten (10) days of this Order [30 days of the initial Petition], each parent shall each:
   (a) Call __________ to make arrangements to attend the __________ class for divorcing parents.
   (b) Complete the work on the UpToParents.org website (parents open to the possibility of reconciliation may substitute the work from the whileweheal.org website).
   (c) Merge their chosen Commitments into a set of Agreed Commitments (the ones they mutually choose) by trading their usernames from the website; keeping their passwords confidential will protect the privacy of their written website work.

(3) Parents shall take their completed website work (Commitments and Exercises) to their assigned co-parenting class.

(4) Within sixty (60) days of this Order [the initial Petition], each parent must complete the assigned class and file the following with the Court:
   (a) A copy of the Certificate of Completion handed out at the end of the assigned co-parenting class, and
   (b) A copy of the Conclusion Page from that parent’s website work.

(5) Parents shall
   (a) Read their Agreed Commitments before all hearings and before filing any pleading other than an agreement and
   (b) Bring a copy of their Agreed Commitments to all hearings.

(6) This website work is a powerful opportunity for parents to reduce conflict and build cooperation, and its exclusive purpose is to help parents cooperate better. No portions of either parent’s website work may be used or admitted at any hearing or trial for any other purpose.
GENERAL ORDER/RULE FOR CHILD-FOCUSED WORK
IN ALL PATERNITY CASES

(1) This Order/Rule shall apply in all paternity cases where the finding of paternity occurs after January 1, 2007. The Clerk is hereby ordered to issue a copy of this Order/Rule to all parties and attorneys in all new paternity cases.

In order that parents in paternity cases have the best opportunity to protect themselves and their children, the Court orders as follows.

(2) Within twenty-one (21) days of this Order [21 days of the finding of paternity], the parents shall each:
   (a) Complete the work on the ProudToParent.org website.
   (b) Merge their chosen Commitments into a set of Agreed Commitments (the ones they mutually choose) by trading their usernames from the website; keeping their passwords confidential will protect the privacy of their written website work.
   (c) File a copy of the Conclusion Page that will appear when the website work is completed. Parents may use a cover page entitled “Confirmation of Child-Focused Website Work” reciting in substance:

   “____________, [father/mother] of __________, confirms completion of the work on the ProudToParent.org website. Attached hereto is a copy of the Conclusion Page from that work.”

(3) Parents shall
   (a) Take their finished website work to their assigned co-parenting class,
   (b) Read their Agreed Commitments before all hearings and before filing any pleading other than an agreement, and
   (c) Bring a copy of their Agreed Commitments to all hearings.

(4) This website work is a powerful opportunity for parents to reduce conflict and build cooperation, and its exclusive purpose is to help parents cooperate better. No portions of either parent’s website work may be used or admitted at any hearing or trial for any other purpose.

(5) The Court solicits the assistance of counsel to help develop the child focus that will serve child and parent interests alike. This work by counsel should include:

   (a) Giving parents any necessary help to complete the website;
   (b) Discussing with clients any especially important Commitments or Exercises from the website; and
   (c) Discussing with parents how their child focus will likely serve child and parent interests alike.

________________________________________
Court and date
TO: All divorcing parents referred to local *Parents as Partners* Class  
FROM: Kristin O’Malley  
RE: Welcome. And some work that will help you!

Here’s an important *head start* for your upcoming “Parenting as Partners” class.

Do the work on [UpToParents.org](http://UpToParents.org). Once you finish, print out your completed work (including the Commitments you chose and your Exercise responses) and take it to your class.

This website work is required by the Court, and it will help you understand some of what will be discussed at your class.

The website also has a “Parents Corner” link you can use to reach interesting audio and interactive articles that can help you.

If you don’t have Internet access, you can use any public library branch. Get started soon on the website work, as it can take between 1-2 hours to complete.

*Remember to take your finished website work to your class.*

Thank you.

* If you are open to the possibility of saving your marriage, you can go to [WhileWeHeal.org](http://WhileWeHeal.org) instead.
WELCOME!!!

TO: All never-married parents referred to local ProudToParent Class
FROM: Hardie Blake
RE: Welcome. And some work that will help you!

We look forward to having you in our two upcoming 2-hour workshops.

Here’s an important head start to understand some of what will be discussed at your workshops. Do the work on ProudToParent.org. Once you finish, print out your completed work (including the Commitments you chose and your Exercise responses) and take it to your class.

This website work is required by the Court, and it will help you understand some of what will be discussed at your class.

If you don’t have Internet access, you can use any public library branch. Get started soon, as it can take between 1-2 hours to complete.

Remember to take your finished website work to your class.

Thank you.
Appendix C: Sample Judges’ Notice to Parents in Divorce Cases

As Judges presiding over divorce (marital dissolution) cases in [ ] County, we will do our best to guide everyone in ways that help the entire family.

Please consider these thoughts to better understand this process, what is expected of you, and what can help you. Please note! Where there’s been domestic violence or abuse, parents are expected to immediately seek counseling to decide which of the ideas in this Notice they may safely use.

1. Everyone’s goal in any divorce case should be to help the family work—even if it’s as a family with a divorce.

No one “wins” in divorce, and any crusade for “victory” will cause more conflict, expense, and damage to children. In all likelihood, a good result is possible for you only if you work for a good result for the entire family, including your children and their other parent.

See FamilyCourtWebsite.org for more information on our expectation of cooperation.

2. Please acquaint yourself with the Streeter County Rule for Cooperation in Family Cases.

That Rule for Cooperation will apply in your case. Copies are available at the Clerk’s office and FamilyCourtWebsite.org. Specific parent obligations in the Rule include:

- contacting the Domestic Relations Counseling Bureau (574-235-0022) within 15 days of the initial petition,
- completing important website work from UpToParents.org, and
- taking that work to a mandatory co-parenting class

3. In addition to the required website work, we recommend that you fill out a Parenting Plan Worksheet (PPW) as soon as possible.

Children’s needs increase dramatically when parents separate. We strongly suggest that you use the PPW form attached to the Rule for Cooperation to build agreements on the decision-making and living arrangements that can protect your children. While we hope you will not need court hearings, note that the Rule for Cooperation requires parents to bring their completed UpToParents.org work and a current PPW to any court hearing.

4. Because of its emotional and financial costs, many parents are well-advised to consider if divorce is necessary for them.

In divorce, parents must divide assets and double many expenses. Added to this financial burden are the even greater emotional costs to members of the family. If there is no emergency, you may wish to use counseling and other resources to see if your marriage can be saved.

18 In order to afford different possibilities on parent handouts, the wording here is slightly different from the wording of our Sample Brochures. We encourage you to develop the language best for your jurisdiction. The following Appendix on “Important Legal Information of Parents in Divorce Cases” is another possibility.
5. **All parents and attorneys should remember that parent conflict is gravely dangerous to children and conduct themselves in ways that reduce conflict.**

Dozens of studies show that parent conflict seriously hurts children. We expect parents, whenever it is safe to do so, to relate courteously for the sake of all members of the family, including especially the children.

*Conflict between parents is the best predictor of a child’s later maladjustment.* —Dr. Anthony L. Berardi

6. **Parents can help themselves by remembering that children need the best possible safe relationship with both parents.**

We expect everyone to support whatever safe relationship the children can have with each parent.

*Children have no defense against their parents’ anger.* —Dr. Ross Campbell

7. **We do not allow inappropriate use of court.**

We will not allow you to be victimized by hearings or other proceedings that simply embarrass you or hurt your best interests. We also will not allow you to make such use of the legal system against anyone else. Remember also that divorces are no-fault cases and are heard by experienced judges, not juries. Those judges are entirely unimpressed with attempts to make divorce about faultfinding or blame.

8. **The Courts are available in dangerous cases like domestic violence, but we expect parents and attorneys to understand that legal battles in other cases may actually hurt.**

- Most issues families face in divorce are not really legal issues and have no legal answers.
- While parents’ cooperation can build better alternatives, a judge can only pick from the bad alternatives available in the middle of parent conflict.
- Going to court or submitting to evaluations almost always creates hurt, fear, distrust, and financial costs far outweighing any benefits.

9. **Carefully consider using any counseling or other help to move forward successfully.**

Separation and divorce are confusing and emotionally devastating experiences, whether parents divorce or reconcile. Seek the help you need to create a better future.

10. **Protecting your children is likely your light out of hurt and fear.**

There is a good guiding light almost all parents can use in divorce: **parents who do what is best for their children almost always do best for themselves.** Parents who build peace, courtesy, and cooperation for their children are the very ones who can use their money and emotional resources building a better future rather than arguing the past.

*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 at 25?”* —Patrick Brown
Appendix D: Important Legal Information for Parents in Divorce Cases
(for use in possible pamphlet or video/pamphlet combination)

If you are a parent in a divorce case, consider the following information about (1) what can help you and your children and (2) some tasks you will need to attend to. This information may not be everything a parent needs to know in a difficult or complicated divorce, but it can give a good outline of the basic tasks you must accomplish.

Everyone involved in family cases, including divorce, is responsible for four overall goals:

- Ensuring safety.
- Reducing conflict.
- Building cooperation.
- Protecting children.

As the Indiana Supreme Court has stated (see Lambert v. Lambert, 861 N.E.2d 1176 (Ind. 2007)), the overarching policy goal in all family cases with children is protecting the best interests of the children.

If you divorce, your children will not have the protection and benefits of an intact family and a happy marriage between their parents. However, you can protect your children from many of their losses by building a peaceful and respectful relationship between their parents. Probably the worst thing you can do is to add unnecessary parent conflict to the hurt and fear your children are already suffering.

While different divorce cases have different issues, here are seven tasks that all divorcing parents should handle.

1. **Provide for safety in your family.**

   If there has been violence or abuse against you or any child in your family:
   
   a. Immediately seek counseling for yourself and any child who has suffered or seen violence or abuse.
   b. Ask the Court for any necessary protection orders. (An attorney, the YWCA Domestic Violence Unit, or the Prosecutor’s Office can assist you; court proceedings may be unhelpful in other cases, but they are important if there is the possibility of abuse or violence).
   c. Make sure your attorney knows the exact facts of your family relationships.

2. **Focus on your children’s needs.**

   Divorce cases must be handled in ways that serve the best of interests of children. This is the law, and it is also what will serve parents’ best interests. You can make your life and your children’s lives better.
Cooperating to protect your children is so important that you will hear judges referring to you as co-parents, meaning separated or divorced parents responsible for raising children between their separate homes.

If it is a safe and workable option, cooperative co-parenting not only helps children, but often helps parents as well. To help you focus less on the past and more on your children’s needs and the future, you can use UpToParents.org. Please attend as soon as possible any co-parenting class you are referred to, and take advantage of other books, classes, tapes, and other resources that will help you give your children a peaceful future.

An important secret in divorce is that the parents who do best for themselves are usually the parents who focus on their children’s need for peace in their family. These parents realize that they will either win together by giving their children a good and peaceful childhood, or they will lose together by giving their children the devastating hurt that goes with living in parent conflict. When parents work together for their children, they are also better off—legally, financially, and as parents.

3. If it’s safe to do so, support your children’s relationships with both of you.

You can do this in a number of ways. Here are six important ones.

a. Realize that you cannot replace your children’s other parent. The best mom still isn’t a dad, and the best dad still isn’t a mom. To give your children what they need, separate any hurt over your marriage from your children’s need for relationships with both their parents. You have a vital interest in supporting whatever safe and good relationships your children can have with their other parent.

b. Agree on a parenting time schedule that will give your children frequent, meaningful, and continuing contact with each of you. Indiana’s Parenting Time Guidelines offer some ideas on the minimum time children should have with each parent. But, as the Guidelines say, those are minimum times, and, if safe, it’s better for most parents to be flexible and cooperative in coming to a schedule that works for everyone.

c. Celebrate good things your children get to do with each of you. Parents do best for their children by celebrating, not just tolerating, their right to good times with both parents.

d. Observe a “Child Safety Zone” by making sure your children never hear you say anything negative about or to their other parent. Parents have 10,000 minutes each week to discuss difficult issues; there’s never any excuse for discussing a difficult topic or having a fight in the 3 or 4 minutes when children see you together or hear you talking. Those 3 or 4 minutes should be totally dedicated to your children and their need for peace in their family.

e. Regularly tell your children something positive about their other parent. Your children can be helped by knowing that their parents remember good things in each other. When parents share with their children good qualities about their other parent, children can be reassured that their parents will be a team for them.
f. **Encourage your children to call their other parent at least every other day that they are with you.** Don’t leave your children feeling they are actually *in custody*, as if they were criminals not allowed to contact the people they love. Give them the reassurance that you want them to have access to both of you.

4. **Handle your separation in a way that protects your children.**

Parents’ separation is difficult, even frightening, for children.

If safe, take all the steps you can to achieve early the highest possible level of cooperation with your co-parent and the greatest sensitivity to your children’s hurt and fear. Come to the best temporary decisions that will:

- protect your children and their safe relationships with both of you,
- pay your family bills without adding unnecessary expenses, and
- start building the best and safest co-parenting relationship.

5. **Decide how you will be making parenting decisions.**

Separated and divorced parents must decide how they will make the many future decisions about their children’s upbringing. While parents must respect that minor day-to-day decisions will be up to each household to decide, major decisions (for example, children’s medical and counseling care, religious upbringing, school, discipline, friends, and schedules) concern both parents.

If safe and workable, consider using what the law calls *joint legal custody* (JLC). Separated and divorced parents with JLC make major child-related decisions in the same way that happily married parents do. They (a) share information, (b) hear each other’s ideas, and (c) come to common decisions.

Decide if you can use joint legal custody or if one of you will have to be given final say on these major questions in your children’s lives. It should go without saying that your children’s best interests—not parents’ hurt—should be your guide in deciding this and all major matters involving your children.

6. **Arrive at a fair child support agreement.**

The Indiana Supreme Court has adopted Child Support Guidelines and even has a website where you can calculate this guideline: [www.in.gov/judiciary/childsupport](http://www.in.gov/judiciary/childsupport). A copy of the complete Guidelines is at [www.in.gov/judiciary/rules/child_support](http://www.in.gov/judiciary/rules/child_support).

Please understand that in no case is there a single, absolutely right figure for child support. Many parents are helped by accepting this fact and avoiding a lot of unnecessary costs and conflict as they arrive at a reasonable child support figure.

Parents should also reach agreements on paying special child expenses like children’s health insurance and on claiming tax exemptions.
As a start, you can use the attached Child Support Worksheet. (Copies are also available at http://www.in.gov/judiciary/rules/child_support/docs/csow.doc.)

7. Reach a fair division of property and debt.

As with child support, there is no single, absolutely right way to divide property and debt. The law says you should make a “just and reasonable” division and that an equal (50-50) division is presumed to be just and reasonable. However, the law, common sense, and a focus on your children’s needs can all suggest that adjustments might be just and reasonable.

IC, 31-15-7-5 lists factors like the children’s need for a stable residence, the contribution of each spouse to the property, the earning ability of each spouse, and the acquisition of the property by a spouse before the marriage or through inheritance or gift. Remember that no number may be the exactly right number, and you need a resolution, not an endless or destructive battle.

Conclusion

As you handle the important tasks before you, please use the ideas shared in this paper, the information on www.FamilyCourtWebsite.org, and your own commitment to create a bright future for your children.

Remember, the more you can constructively focus on your children and the future (instead of any resentments or the past), the better you are likely to do for your children and yourself.
Appendix E: Parenting Plan Worksheet

Conflict between parents is the best predictor of a child's later maladjustment.
– Dr. Anthony L. Berardi

1. If you’re in conflict, your children are in danger.
2. Only you, their parents, can protect them from that danger.
3. When you focus on your children and their need for cooperation to replace conflict, even you will be better off.

You are faced with a heroic task: protecting your children as you work through one of the most difficult periods in your own life. Be assured that focusing on your children’s needs will likely be your best help as well.

When you replace conflict with safe cooperation in order to save your children, you cannot help but do what is best for yourself.

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 at 25?”
– Patrick Brown
Attorney/Counselor/Mediator
Directions for Completing This Parenting Plan Worksheet

As the parents (and thus as the two people who can truly protect your children at this critical time), you should, if reasonably safe and possible, prepare a single version of this Parenting Plan Worksheet. If you cannot prepare a single version of the worksheet, you should prepare separate ones.

You will be helped in completing this Worksheet by first doing the work on the UpToParents.org website. (If you are open to the possibility of reconciliation, you can substitute the work on WhileWeHeal.org. Never-married parents can use ProudToParent.org.)

For help in completing, reviewing, and filing this PPW, you can receive free assistance by contacting the Domestic Relations Counseling Bureau (DRCB) at (574) 235-9662.

1. We have reached the following agreements:

   A. How will you as parents be making the important decisions in your children’s lives? Please state whether you will be using cooperative joint decision-making (sometimes called “joint legal custody”) or whether one of you will be making the final decisions on such major matters as the children’s residence, school selection, medical care, and religious upbringing. ____________________________________________
   ____________________________________________
   ____________________________________________
   ____________________________________________

   B. The children’s declared legal residence for school and legal purposes will be:
   ____________________________________________
   ____________________________________________
   ____________________________________________

   C. Our parenting time schedule for the children to be with each of us will be:
   ____________________________________________
   ____________________________________________
   ____________________________________________
   ____________________________________________
   ____________________________________________

   D. Child support: ____________________________________________
   ____________________________________________
   ____________________________________________

   E. Responsibility for the children’s medical insurance will be as follows:
   ____________________________________________
2. This is how we will be relating as parents in order to protect our children from having to see, hear, or take any responsibility for our conflict.

Example A: We are getting along well enough that we can use courteous face-to-face discussions about the children’s issues and needs. The children saw us get through the difficulty of our physical separation in a cooperative fashion. All of us worked together to move some of Dad’s stuff to his new apartment. With the counseling we are receiving, we think we can continue to relate well.

Example B: Our recent interaction has been quite strained. We have decided to limit our conversations to the telephone and to our counseling appointments until our interaction improves. Together we have told the children that they are not responsible for our fighting, and we have promised not to do so in front of them again. To carry that out, we have agreed that temporarily we will be dropping the children off at their grandparents’ home, and we will not be having a lot of face-to-face meetings. We have agreed that when we are all together, we will limit our conversations to a few courteous sentences.
3. These are the resources we will be using to achieve and keep a child focus, courtesy, and cooperation between us. For example:

A. Redoing the [UpToParents.org](http://UpToParents.org), [WhileWeHeal.org](http://WhileWeHeal.org), or [ProudToParent.org](http://ProudToParent.org) website work.

B. Additional co-parenting classes, including re-attending the basic class or attending high-conflict classes.

C. Mediation.

D. Confidential therapeutic assessment of the parents by DRCB to develop a set of recommendations for their improved interaction. (The Court’s order may specify that the recommendations either be shared immediately with the Court or be shared with the Court only if problems continue.)

E. Individual, joint, family, or child counseling.

F. Appointment of a psychologist or parent coordinator to work with parents.

G. Appointment of a child legal representative (CLR) or guardian ad litem (GAL) for the children involved.

H. Completing a new Parenting Plan Worksheet (PPW).

Example: We will continue to read regularly from our Agreed Commitments from the [UpToParents.org](http://UpToParents.org) website. We have also agreed to use at least four sessions of closure counseling over the next two months to help our children and ourselves adjust to our separation. We have agreed that we will use mediation or counseling should we have any differences. Our pastor has also agreed to be available to us.
4. We will be using these additional measures to protect our children at this critical time for them. (Circle all that apply and add any additional ones.)
A. Remembering that our children will experience any attack between us as an attack on them.
B. Appreciating that for our children we will always be family.
C. Using every contact we have as an opportunity to create goodwill.
D. Bringing kindness to every occasion when we are all together.
E. Recalling that our children’s only job is to be children, not our messengers, spies, counselors, confidants, or carriers of our hurt.
F. Being sure to remember that our love for our children is greater than any issue we could ever have with each other.
G. Regularly sharing compliments and positive memories about each other with our children.
H. Celebrating positive things they do with the other parent.
I. Regularly encouraging them to call the other parent for a friendly talk.
J. Respecting each other’s parenting time while also being flexible, so the children’s lives can be as normal as possible.
K. Educating our extended families and close friends that they need to make peace as well.
L. Paying special attention to keep our appointments and schedules with each other—and calling promptly if any problems come up.
M. Others.

__________________________________________________________________  ____________________________________
__________________________________________________________________  ____________________________________
__________________________________________________________________  ____________________________________
__________________________________________________________________  ____________________________________

Father’s name (typed or printed)  Mother’s name (typed or printed)

Father’s signature  Mother’s signature

Date  Date

Signature of father’s attorney  Signature of mother’s attorney

Children have no defense against their parents’ anger.

–Dr. Ross Campbell
Appendix F: Family Attorneys’ Pledge of Cooperation

In 2005 over 50 family attorneys from St. Joseph County, Indiana signed the following Pledge of Cooperation. Many had contributed considerable time writing and commenting on earlier drafts. The values, work, and final pledge of these attorneys reflect the growing number of American lawyers wanting a system of family law responsive to the true needs of their family clients and in closer keeping with the historical role of the law as an instrument of problem-solving. See “Attorneys as Healers: Rediscovering the Law’s Problem-Solving Tradition” on the Professionals Corner link of UpToParents.org.

It’s our hope that leaders on the bench and in the bar will soon establish a standard of care for family attorneys incorporating these ideals.

Family Attorneys’ Pledge of Cooperation

Recognizing that families involved in divorce and other legal cases will be served best by solutions that build cooperation and protect children, the undersigned attorneys pledge as follows.

1. As family attorneys we will constantly test the propriety of our words and advocacy by whether they can be expected to serve the healthy and child-focused cooperation of parents and other family members. We will educate our clients that in most cases family members will either win together or lose together and that success must be gauged by achieving solutions serving the best interests of all family members.

2. We will ensure that our clients fully understand their legal duty and personal interest in observing the letter and spirit of all court orders.

3. Knowing that clients will often follow our lead, we will consistently practice and model courtesy with all persons, including clients, family members, courts, and fellow counsel.

4. We will work cooperatively with our colleagues and the courts. On request, we will voluntarily trade all relevant and discoverable information in our cases. We will accommodate procedural requests that do no harm to our clients’ best interests. We will not mislead any court, party, or attorney.

5. We will work cooperatively with our colleagues and the courts to assure the safety of all family members. If there has been any history or threat of violence or abuse against any family member, we will:
   • Consult with fellow counsel to find the best ways to protect all family members, including any children who may have suffered or witnessed any violence or abuse.
   • Counsel clients on their duty to observe the letter and spirit of all court orders and on the benefits of seeking all useful counseling.

6. Except in cases of dangerous relationships, we will discuss with all prospective divorce clients any interest they may have in saving their marriages and the advantages and disadvantages of attempting to do so.

7. We will educate our clients that parent conflict can be gravely dangerous to children and that parents can often serve their own best interests by building cooperation for the sake of their children.

8. Because litigation can damage relationships and polarize family members, we will make every reasonable effort to avoid filings, custody evaluations, and hearings, including by:
• Whenever possible, consulting with fellow counsel to attempt cooperative resolutions before filing pleadings or scheduling hearings.
• Refraining from taking any non-legal matters to court, including any matters better served by counseling or mediation solution rather than a legal ruling.
• Educating our clients that while parents’ cooperation can build better alternatives, a judge can merely pick from the poor alternatives available in the midst of parent conflict and that judicial decisions are not a substitute for parents working together.

9. We will refer our clients to counseling, mediation, or other assistance we believe could help them improve their relationships and the healthy functioning of their families.

10. We will work in our cases, in our professional associations, and in our public statements to develop a culture of cooperation in all family cases. We will give a copy of this Pledge to (and discuss it with) all clients in dissolution and paternity cases and in any other cases involving conflict between family members. We will educate the public, fellow counsel, and professionals from other fields about the urgency of, and many opportunities for, cooperative problem-solving in family cases.

St. Joseph County Signatories as of December 2006

STATE OF ____________ )  __________________ COURT
COUNTY OF__________ )  SS:
)  CAUSE NUMBER:
IN RE THE MARRIAGE OF )
, mother, )
AND )
, father.)

Motion of Father for Determination of College Expense Sharing

Father moves the Court for an order determining the parents’ respective responsibilities for their two children’s college expenses, showing the Court as follows:

1. The parents have two children enrolled (one as a freshman and one as a sophomore) at the University of Notre Dame. Not counting expenses covered by scholarships, the combined annual expense for tuition, books, fees, room, and board exceeds $50,000, and the parents have not been able to reach an agreement on sharing those expenses.

2. Cooperation Update:
   a) Required discussion: Counsel for father certifies that on November 19, 2005, he spoke with mother’s counsel on this matter, but no resolution was reached.
   b) Suggestions for helpful resources: Counsel agreed the following resources could be useful for the parents in resolving this and any future issue, reducing the overall level of conflict between them, and building cooperation: (a) mediation and (b) brief joint counseling, perhaps followed by family counseling if recommended by the counselor. Father’s counsel also recommends a new Parenting Plan Worksheet.
   c) Usefulness of professional screening: Father’s counsel believes a professional screening through DRCB would be a useful process for a recommendation about resources the parents could use to resolve future issues. Mother’s counsel does not believe that screening is necessary.
   d) Website work: Both parents have reviewed and will bring to any upcoming hearing their copies of their Agreed Commitments from UpToParents.org.
   e) Co-parenting class: Both parents completed the TransParenting class in May 2005.
   f) Parenting Plan: The parents have a current Parenting Plan, which they have reviewed and will bring to any hearing.
   g) History of hearings: The parents have had the following hearings:
January 4, 1997: Provisional hearing on temporary custody, occupancy of the home, child support, and parenting time.

July 20, 1998: Hearing on final agreement on dissolution.

August 31, 2001: Hearing on cross motions for modification of custody.

September 30, 2001: Hearing on mother’s motion to correct errors on order of modification.

Respectfully submitted,

________________________________________
Attorney for Father
Motion of Mother for Supervised Exchanges and Referral to Parenting as Partners Class

Mother moves for an order referring parents to the Parenting as Partners class, stating as follows:

1. The parents have three minor children, ages 8, 7, and 2.

2. The parents’ interaction has been difficult, and it’s believed that supervised exchanges at the Streeter Safe Home and the multi-session classes at Parenting as Partners could help the cooperation and good outcomes for everyone in the family.

3. Cooperation Update:
   a) **Required discussion:** Counsel for mother has not been able to speak to father (who is without representation) as he has declined to speak about the matter with counsel. Counsel sent father a copy of the instant motion one week ago and asked that he be in touch should he change his mind. He has not contacted counsel as of this filing.
   b) **Suggestions for helpful resources:** Mother and her counsel believe the following resources could be useful for the parents in resolving this and any future issue, reducing any conflict between them, and building cooperation: mediation after completion of at least part of the Parenting as Partners class.
   c) **Usefulness of professional screening:** Mother’s counsel believes a professional screening through DRCB would be a useful process for a recommendation about resources the parents could use to resolve future issues.
   d) **Website work:** Both parents have been advised of their duty to review and bring to any upcoming hearing their copies of their Agreed Commitments from UpToParents.org.
   e) **Co-parenting class:** Both parents completed the basic TransParenting class in May 2007.
   f) **Parenting Plan:** The parents have a current Parenting Plan, and both have been advised of their duty to review it. Mother will bring a copy to any hearing.

Respectfully submitted,
Attorney for Mother
Appendix H: Sample Ruling Returning Responsibility to Parents

Some judges have used orders like the following to reinvigorate parents’ sense of responsibility and competence.

**Order on Motions to Modify Custody and Parenting Time**

Mother and Father and their counsel appeared in court on October 19, 2005, on cross motions for various changes in custody and parenting time arrangements. The motions all emanate from the parents’ separate opinions on which of them is more responsible for their two teen-aged sons’ recent problems with truancy, underage drinking, and possible marijuana use.

The Court sympathizes with the pain and grief of both parents, relating both to their separation and also to the serious problems evident in the lives of their sons. At the same time, the Court can’t help but notice that the parents and their counsel have seriously misdiagnosed their true challenge as well as what can help the members of this family. Neither the parents nor their children can be helped—and indeed they will all be hurt—by faultfinding litigation between the parents. The children, now as much as ever, need their parents to work together in their best interests. The children, perhaps now more than ever, will be hurt by continued conflict between their parents.

The parents are not in need of an additional court order regarding custody or parenting time. The real problem is more basic and serious: the parents, despite the obvious love they have for their children, aren’t working together for their children’s benefit. The parents’ conflict has put their children at serious risk, and the Court invites both the parents and counsel to use all their talents and concern for these children to stop the conflict and build the cooperation that alone can rescue the boys.

The Court denies all pending motions [or grants, denies, whatever is appropriate].

The Court orders the parents to settle on and file an agreed Parenting Plan for how they will jointly respond to the needs of their children, including their children’s need for conflict between the parents to end. Options may include, among others, co-parenting classes, high-conflict classes, counseling, and mediation. The parent should use the Parenting Plan Worksheet from the Court’s Rule for Cooperative Family Case Management. If the parents do not reach and file an agreed plan in the next 10 days, they are ordered to promptly commence mediation or counseling to develop one.

A status conference is set for May 1 at 11:00 a.m. for counsel to present the Court a copy of the parents’ parenting plan and an account of the parents’ progress in following it.
Appendix I: Attorneys as Healers: Rediscovering the Law’s Problem-Solving Tradition

Charlie Asher, March 21, 2006

Under various banners (“collaborative law,” “cooperative law,” “holistic law,” “conciliatory practice,” “therapeutic justice,” and others), more and more attorneys and judges have been reaching out for ways that family cases can be handled to protect the true and broadest interests of clients and their families. While once the conflict between the legal claims of the named parties was the focus, now relationships, the emotional recovery of the parties, nurturing family members’ capacity to move on and find their own answers, the interests of children, the ability of parents to successfully cooperate for the sake of their children, and the law’s duty not to further damage and polarize the family have come to occupy more of the law’s concern.

In short, while rights and the conflict between them used to be the law’s chief concern in family cases, in recent years helping the family to work (or work again) by meeting the needs of its members and relationships is becoming the guiding goal of the law’s involvement with families in transition.

One of the most hopeful and pleasant discoveries of courts using these approaches is just how good and animated attorneys can be when they work in partnerships to find solutions with families.

Yet a minority of attorneys can still be heard to say that “real lawyers are about the fight.” Their claim is usually that something new, soft-headed, and even dangerous inheres in the approach of lawyers who see a duty to consider a client’s broader interests in his family, his community, and peace within his relationships.

Are these critics right? One look at some of the source documents of the true values of the legal profession shows how far they have strayed from lawyers’ true calling as healers of conflict. Indeed, the lawyer is no more justified in “giving the client whatever he wants” than the physician is justified in providing whatever dangerous drugs or treatment the patient requests.

Here now are just a few of those authorities.

1. “Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.
“Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereon to stir up strife, and put money in his pocket? A moral tone ought to be infused into the profession which should drive such men out of it.”¹⁹ (Abraham Lincoln, Notes of July 1, 1850)

2. “Dear Sir:

“Yes, we can doubtless gain your case for you; we can set a whole neighborhood at loggerheads; we can distress a widowed mother and her six fatherless children and thereby get you $600 to which you seem to have a legal claim, but which rightfully belongs, it appears to me, as much to the woman and her children as it does to you.

“You must remember that some things legally right are not morally right. We shall not take your case, but will give you a little advice for which we will charge you nothing. You seem to be a sprightly, energetic man; we would advise you to try your hand at making $600 in some other way.

“Most Sincerely Yours,

“A. Lincoln” (Letter of Abraham Lincoln to would-be collection client)

3. “My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature. . . . I realized the true function of a lawyer was to unite parties driven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby—not even money, certainly not my soul.” Mahatma Gandhi, The Story of My Experiments with the Truth

4. “This healing function ought to be the primary role of the lawyer in the highest conception of our profession.” Chief Justice Warren Burger

5. “A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. Whether or not

¹⁹ A couple of remarkable things fly off this page of Lincoln’s notes. For one thing, he virtually assumes peace-making as a primary duty of attorneys. Beyond that, given his proposal that attorneys who stir up strife between neighbors be driven out of the profession, what would he have said about anyone who—intentionally or carelessly—did so in a family case? Lincoln, of course, practiced long before out-of-wedlock birth rates of over 30% and divorce rates of over 40%. Plainly he’d be horrified to think any attorney in family cases wouldn’t be seeking peaceful resolutions whenever and wherever possible.
engaging in the practice of law, lawyers should conduct themselves honorably.”

Preamble to Model Rules of Professional Conduct.

6. “As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications. As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client.”

7. “As a public citizen, a lawyer should seek improvement of the law . . . and the quality of service rendered by the legal profession. . . . A lawyer should be mindful of deficiencies in the administration of justice. . . . A lawyer . . . should help the bar regulate itself in the public interest. . . . The legal profession is largely self-governing. . . . The legal profession’s relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar.”

8. “Winning is not an end; it is often only the beginning. Peace is the end, and healing is the journey toward peace.”

9. “Lawyers have an opportunity to provide healing and support when people are hurting. To be able to enter into people's lives in a terrible time of need and to provide them with hope and support—to find them a path to bring some good out of that bad—is a wonderful thing for lawyers to be able to do.”

10. “Upon being admitted to practice law in the state of Indiana, each applicant shall take and subscribe to the following oath or affirmation: ‘I do solemnly swear or affirm that: I will support the Constitution of the United States and the Constitution of the State of Indiana; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any action,

20 How often does the warrior family attorney explain to his client the likely return volleys from his first piece of gratuitously aggressive advocacy?
21 Some attorneys express shock on reading in the Model Rules of Professional Conduct this description of the attorney as spokesperson for his client’s nominal adversary.
22 I once asked a particularly adversarial attorney why he was taking a family back to court when it was obvious the entire family functioned worse following each visit to court (I was GAL for the children). His explanation was, “That’s just what we do in these cases.” The Rules of Professional Conduct specifically clarify that the law’s processes are to serve the public’s needs, not the other way around.
proceeding, or defense which shall appear to me to be unjust, but this obligation shall not prevent me from defending a person charged with crime in any case; I will employ for the purpose of maintaining the causes confided to me, such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my client at every peril to myself; I will abstain from offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will not encourage either the commencement or the continuance of any action or proceeding from any motive of passion or interest; I will never reject, from any consideration personal to myself, the cause of the defenseless, the oppressed or those who cannot afford adequate legal assistance; so help me God.” Rule 22, Indiana Rules for Admission to the Bar and the Discipline of Attorneys.

11. “The entire legal profession . . . has become so mesmerized with the stimulation of the courtroom contest, that we tend to forget that we ought to be healers of conflict. . . . Trial by adversarial contest must in time go the way of the ancient trial by battle and blood. . . . Our system has become too costly, too painful, too destructive, too inefficient for truly civilized people.” Chief Justice Warren Burger, 1984.

12. “A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect. Comment 1 to Rule of Professional Conduct 1.3.

23 Lawyers are clearly invested with such broad authority and responsibility by this oath—so much so that it’s only logical we should be discussing matters of justice regularly and not justifying our involvement as that of mere functionaries. It’s noteworthy that each lawyer is called on to use his or her personal good judgment to say whether the action, proceeding, or defense appears just or unjust.

24 Query: How could any family—or even an individual client—ever be helped by offensive attorney behavior? The practice should be stopped by the most diligent commitment of courts and bar associations.
Appendix K: Survey a Family Law System
revised April 27, 2010

The following survey exercise affords two important resources to progressive family law professionals and concerned lay citizens.

1. The opportunity to assess the effectiveness of any county’s family law system.
2. An introduction to promising features from other family law systems.

In the coming pages, you’ll have the chance to assign a number between 0-4 for each of 25 components of a family law system. An answer of 4 suggests complete compliance. A score of 3, 2, or 1 denotes a level of partial compliance. For more details on these components, see A Brief Introduction to a Cooperative System of Family Law (including the video linked to its first page) on the “Professionals Corner” of UpToParents.org.

Section A. Putting Upfront the System’s Commitment to Cooperation

1. The jurisdiction uses multiple media (including, for example, excellent pamphlets for divorce and other cases (click Here for examples), a court website like that at FamilyCourtWebsite.org, and even public service announcements) to communicate the advantages and judicial expectations of safety and cooperation in family cases.

2. All filings and court orders consistently caption participants in nonadversarial language: Mother, Father, Husband, Wife, and Putative Father instead of Plaintiff, Defendant, Petitioner, and Respondent. Versus is never used.

3. The jurisdiction has rewritten its divorce and paternity summons forms to communicate the advantages and judicial expectations of safety and cooperation and to refer parents to problem-solving resources such as its court website, UpToParents.org, NoDivorceToday.org, ProudToParent.org, and required co-parenting classes. A sample is available as an attachment to A Brief Introduction to a Cooperative System of Family Law.

Section B. Responsibly Confronting Domestic Violence and Ensuring Safety

4. The jurisdiction has a written plan enlisting all judges, attorneys, and other family professionals in (1) ensuring safety in family cases, (2) responding appropriately to claims of domestic violence, and (3) discouraging false claims of domestic violence. A committee of judges, attorneys, domestic violence experts, law enforcement representatives, and mental health professionals reviews the plan’s effectiveness biennially and submits a written report to the bench and bar for further discussion and action. The report and the county’s practices are regularly discussed, implemented, and improved by the bench and bar as a whole.

5. The jurisdiction (a) affords resources like a 24-hour hotline, coordination with police and other professionals, and trained court staff to assist in protection from domestic violence and (b) uses a program of public education including its family law website and divorce and paternity brochures to advise the public about the interventions, programs, and court access available to protect against domestic violence.
Section C. Educating Parents on the Necessity and Advantages of Safety and Cooperation

6. All parents in divorce cases are immediately referred to UpToParents.org and all parents in paternity cases are, immediately upon the finding of paternity, referred to ProudToParent.org; parents are required to finish their website work, make a copy, and take it to their co-parenting divorce or paternity class. Substitute resources can be used if found.

7. The jurisdiction has four excellent co-parenting classes: (a) a minimum 4-hour class for divorcing parents, (b) a minimum 4-hour class for parents in paternity cases, (c) a substitute class for victims of domestic violence, and (d) a multi-week class for parents in prolonged or high conflict. Early screening procedures assure prompt referral of parents to the class appropriate in each case.

8. The jurisdiction uses effective mechanisms to advise all parents of the website and class requirements and to ensure compliance; substantially all parents attend their classes within 90 days of (a) the petition for dissolution, (b) the finding of paternity, or (c) the parents’ referral to a high-conflict class, and substantially all parents arrive at their classes with their completed website work in hand.

9. Absent exceptional reason such as a genuine emergency, all judges refer parents to an effective sustained intervention if they appear in court more than once (or certainly more than twice). The referral may be to a multi-session high-conflict class, parenting coordination, multi-session counseling, or other intensive process. The court ensures compliance with appropriate follow-up.

Section D. Using Broad Cooperative Measures

10. In addition to the educational resources in components 6-9, the jurisdiction makes widespread use of early problem-solving processes in family cases. These may include early problem-solving case conferences, early neutral case evaluation, mediation, and other processes appropriate to the particular jurisdiction.

11. Parents are encouraged to complete a Parenting Plan Worksheet (PPW) on a form supplied by the court and are required to complete that PPW and bring it to court if any contested motions are filed in a case with minor children. All parties (whether or not parents) are required to exchange on request all relevant financial information.

12. Parents going to court are required to review and bring to any hearing (a) their Parenting Plan Worksheet (PPW) and (b) their Agreed Commitments from their website work.

Section E. Avoiding Unnecessary Appeals to Court and Custody Evaluations

13. Absent circumstances making it unsafe or otherwise unreasonable, all motions must be preceded by a personal or telephonic consultation to attempt resolutions. If the issue is not resolved, the discussion must include (a) an exchange between the attorneys (or the parties themselves if they are not represented) of their ideas on what resources the parties could be referred to so that they can resolve future issues, (b) confirmation that all website, class, and other court requirements have been observed, (c) arrangements for the parents’ completion of a Parenting Plan that will be brought to any hearing, and (d) if the jurisdiction is using UpToParents.org and ProudToParent.org, arrangements assuring that the parents’ website Commitments will be merged and their Agreed Commitments brought to any hearing.
14. All pleadings other than agreements are required to include “Cooperation Updates” confirming the details of the consultation required in component 13, including all matters covered in 12(a)-(d), together with a list of the dates and subject matter of all prior hearings. Pleadings filed without full compliance with the requirements in component 12 must include a specific statement of the reasons for failure of compliance. The jurisdiction strictly enforces the pre-motion consultation and Cooperation Update requirements; absent a demonstrated emergency or special cause, no hearings are allowed and no relief accorded if those requirements are not observed. Sample conforming motions are available on the “Cooperative System” and “Model Rule” articles on the “Professionals Corner” of UpToParents.org.

15. The jurisdiction does not allow custody evaluations or trials until all cooperative measures have been exhausted or shown to be ineffectual; requests for custody evaluations or trials must (a) be in writing, (b) list all problem-solving measures already used, and (c) explain why further problem-solving measures hold no reasonable prospect of success.

### Section F. Assisting Unrepresented Persons

16. The county has in place a regularly reviewed written plan for handling pro se cases. A standing committee studies and advises the bench and bar biennially on the plan and the need for modifications. The plan includes at minimum compliance with components 1-12 of this survey, good forms and a good website in plain English and plain Spanish, clerks specifically trained in helping pro se parents, and broadly disseminated advisements on the availability of these resources.

### Section G. Committing to Ongoing Professional Education

17. The jurisdiction has developed, publicizes, and regularly discusses a Family Attorneys’ Pledge of Cooperation (an example is available on the “Professionals Corner” link of UpToParents.org). Even if voluntary, the Pledge is a regular topic of discussion and professional education among attorneys and judges and is a vital and consistent part of signatory attorneys’ work. Signatory attorneys give copies of the Pledge to, and discuss it with, all persons involved in divorce and other family cases.

18. The jurisdiction holds monthly meetings (one-hour meetings, breakfasts, or lunches) where family professionals (including all judges and most attorneys, mediators, counselors, co-parenting educators, parent coordinators, and others) present about and discuss ongoing improvements in family law programs, processes, and cooperative practices; useful changes are studied further and implemented through subcommittees.

19. The jurisdiction holds an annual all-day conference on those matters and related topics, and it invites broad public and inter-professional participation.

### Section H. Committing to Avoidance of Harm and to Professionals’ Focus on Families, Children, and the Relationships They Depend On

20. The system and the judges and attorneys working in it share a commitment to (a) doing no harm to families, family relationships, or family members (especially children), (b) ensuring safety, (c) reducing conflict, (d) building cooperation, and (e) protecting the children and all healthy relationships in families. There is a consistent awareness on the part of the judges and attorneys that unnecessary litigation can badly injure
children, parents, and families. There are virtually no unnecessary motions, hearings, custody evaluations, or trials, the families brought to court absolutely require court, and attorneys work predictably and cooperatively together to the ends described in (a)-(e).

21. Judges and attorneys share a commitment to protect and encourage the best possible safe co-parenting relationships and other cooperative relationships essential in families. Judges and attorneys consistently act with an awareness of (a) children’s dependence on the best possible safe relationships between their parents and (b) the call for legal professionals and processes to build and protect—and never injure—those co-parenting relationships. This same commitment extends to other relationships impacted by family cases (including parent-grandparent conflict, dependency, abuse and neglect, guardianship, delinquency, and other family cases).

Section I. Submitting the System to Regular Review and Improvement

22. At least biennially, the family bench and bar collectively review all court rules to ensure that they effectively support safety, conflict reduction, cooperation, and protection of children and healthy relationships in families. Recommended changes are circulated, adopted, and implemented.

23. At least biennially, the jurisdiction reviews all four co-parenting classes through a committee of at least two counselors, two judges, two attorneys, a mediator, and a domestic violence expert; that committee issues a report for review, discussion, and implementation by the bench and bar.

24. At least biennially, the jurisdiction systematically reviews the adequacy of all of its problem-solving resources (including court programs, counseling, mediation, parenting coordination, and attorneys’ and courts’ practices in making timely referrals of parents to these resources), court and attorney practices, and cooperation with other professionals. The jurisdiction continually makes improvements whenever they would serve the interests of families.

Section J. Making Improvement Immediate and Ongoing

25. The jurisdiction in the last 24 months has implemented one or more significant improvements in its family law system or professional practices and is working diligently on additional improvements.

The improvements in the last 24 months include: [insert].

The improvements being worked on presently include: [insert]