

THE PARENTING PARADOX

Our domestic relations statutes ask Arizona parents to achieve the impossible. Although the general purpose of the statutes is to promote strong families and strong family values, there is a real paradox in marriage dissolution cases where the parties have children. When dissolving a marriage, people are required to declare that their marital relationship is broken and cannot be repaired¹, but parents are then required² to work together cooperatively to make important legal decisions concerning their children.

This paradox is important to investigate because it does not cause a problem for all parents. In some families there is a clear distinction between the role of husband and wife and the role of mother and father. In these families, the parties to the marriage transition comfortably into their new relationship roles as co-parents. Even though they may not have been on the same page as partners in the context of marriage, they do see eye to eye when it comes to raising their children. In these cases, the parents likely have similar beliefs about education, medical care, lifestyle of the children (personal care), religion, and the like. Because their beliefs are similar, they naturally tend toward agreement over conflict when making legal decisions, or co-parenting.

In many families, marriages dissolve as a result of a recent (or recurring) and significant breach of trust, either by one or both spouses, or having to do with the business of the marital relationship. In others, the marital relationship has broken down in part because one or both people lack the communication or conflict resolution skills to resolve ongoing disputes in a way that strengthens the relationship instead of tearing it apart. Still, other marriages conclude as a result of mental health issues of one or both spouses, physical, financial, or emotional abuse, drug or alcohol misuse or abuse, or for a myriad of other reasons.

In my observation, parents take divorce very seriously. Most parents who find themselves filing a petition to dissolve their marriage are doing so because they have tried everything they can to make the marriage work, to keep the household together, and

¹ See, [A.R.S. § 25-312\(3\)](#)

² See, [A.R.S. § 25-103\(B\)\(2\)](#)

to avoid the prospect of having to reestablish independent lives. Many have sought advice from family, friends, or clergy; some acquire self-help through books, audio books, and personal development courses or seminars; and others have tried individual, family, or marital counseling. Despite these best-efforts, moving forward with dissolving their marriage is either a necessity given the particular life-circumstances involved, or a relief (or perceived relief) when compared to the recurring conflict present in the marital relationship. On the whole, parents are dissolving their marriages because the relationships they have with their spouses are irreparable. It is therefore natural for parents at this point in their lives to declare that their marital relationship, the relationship they have with their spouse, is irretrievably broken.

It is completely unnatural, on the other hand, for parents to experience enough pain to move beyond careful deliberation and into the decision to sever their marital relationship by declaring they will go no further with their spouse, but to then feign some belief that their unwillingness or inability to continue with the spouse has been somehow (perhaps miraculously) cured and that while it was impossible to establish communication and/or reestablish trust in the marriage (moments ago), it is now possible to work with the spouse and immediately rebuild a functional relationship, replete with a new ability to communicate effectively together and to reach a cooperative consensus or agreement *before* implementing any major legal decisions for their children.

When the parties' irretrievably broken marital relationship draws to a close through the court process, their legal relationship as unmarried co-parent's is in formulation and will be defined (and governed) by the joint legal decision making agreement and parenting time schedule, or parenting plan.

The statutes are written as though parents have the ability to conjure up an accurate forecast of future events to work from before drafting a parenting plan; as though there is a bright and certain pathway where the future growth and development of the parties' children is certain; and as though the family will go without challenges when adjusting to the fact that nearly every aspect of their lives have changed. Our laws

concerning modification of court orders provide little room for error considering that *even under the best circumstances, the parties are learning how to transition from being spouses in an irretrievably broken marital relationship to being responsible, mature adults, in a loving and supportive co-parenting relationship.*

If the Court has issued an order granting the parents joint legal decision making authority, both parents must reach consensus about each decision before any decision can be carried out. When (not if) something happens after the original order has been entered and the parents can't agree with each other concerning a resolution for necessary legal decisions or longer term changes to the parenting plan, the statutes require enforcement of the existing parenting plan for at least a year before the court is permitted to hear the matter and possibly enter an order changing the terms. During the year following the entry of a parenting time or legal decision making order, parents with joint legal decision-making authority who cannot agree with each other and for whom mediation has been unsuccessful are relegated to 1) enduring conflict in their co-parenting relationship; 2) making efforts to skirt the time-frame requirement by filing "emergency motions;" or in the worst case, 3) purposefully fabricating circumstances which are "serious enough" for the court to take notice (e.g. Calling Police, DCS, sabotaging the other parent concerning medical or education related appointments, etc.)

While it is clear that parents should not be able to rush back to court just because they don't like the outcome of an order, it is equally dysfunctional and contrary to the best interests of children to subject a family to ongoing or fabricated conflict in the name of complying with a statutory, but functionally procedural deadline. Review hearings should be routine so that parents can be redirected to appropriate resources.

As a starting point, the parties are conditioned to relate to each other as spouses in an irretrievably broken marital relationship. At the outset, they inherit the level of trust present in their marital relationship. The parties do not know how to relate to one another as co-parents, they are unfamiliar with the boundaries of the new relationship as co-parents, and they do not understand that an opportunity exists to define and design the

co-parenting role together. They must transition away from being spouses in an irretrievably broken marital relationship into being responsible, mature adults, in a loving and supportive co-parenting relationship.

Without a new orientation to parenting decisions, communication, roles, rules, boundaries, and a procedure for making joint legal decisions, parents will utilize the same communication and dispute resolution skillsets with each other that they developed during the irretrievably broken marital relationship.

There is no better time to discuss the foundation of a co-parenting relationship than when two parents dissolve their marital relationship. It is important for each parent to talk openly and honestly, seriously, about their thoughts, needs, values, and beliefs about parenting their children together with the other spouse. To the extent a breach of trust has occurred in the marital relationship, adopting that level of trust in the co-parenting relationship is optional. This is an opportunity to recalibrate and rebuild trust, not an opportunity to reinforce resentment and fears.

The question to parents is not “can we parent our children together,” but it is “how can we parent our children together.” Both parents should focus on building a functional parenting plan that is ultra-clear about establishing each parent’s responsibilities. Creating a co-parenting relationship from the ground-up is an opportunity to establish a new kind of relationship with your former spouse; a relationship built on (familial) love, respect, generosity, and forgiveness.

PARENTING PROTOCOL 1.0
A DISPUTE RESOLUTION PROCEDURE
FOR MAKING LEGAL DECISIONS TOGETHER

If normal phone or e-mail communications break down, the Parents agree to follow the following three-stage process for making parenting decisions together. In summary, the process involves 1) raising a topic; 2) discussion about the topic; and 3) resolving the topic by making a decision, together.

Raising A Topic: When either parent becomes aware of the need to discuss a particular parenting topic, that parent will raise the topic with the other Parent by sending an e-mail to the other parent with the subject line “New Parenting Topic - _____” where the blank line represents the topic to be discussed.

Topics are not limited to the topics in this agreement, but should always be descriptive of the topic itself and not the outcome either parent desires concerning the topic. “Karate” for example is an appropriate topic, where “he’s not quitting Karate,” is not appropriate topic.

The body of the New Parenting Topic E-mail must include the following information:

Priority & Timeline for Resolution: First, on a scale of one to ten (one being the lowest priority), determine the level of priority for this topic. Next, provide a date by when this topic needs to be resolved. If the date provided is a firm deadline, please briefly explain why the date is fixed and cannot be moved.

Summary: A summary of the topic. Include information about how or why the topic has come to the forefront. Perhaps the topic is based on something a child said or did, or something a child didn't do. Perhaps the topic involves an interaction between the parents, or between the child and a third party, such as a teacher or school acquaintance.

Available times for discussion: Provide times when you are available to discuss this topic.

Additional information required: If you need additional information to make a decision on this topic, please explain what information you need. If you need information or documents from the other parent, list that information here.

Additional resources required: If you need additional resources to make a decision on this topic, input from a third-party expert, or if you would like to involve a mediator to discuss this topic please list that person or resource or explain what resources you need and why.

Proposed Resolution: If the parent raising the topic has a proposed resolution, it is permissible to include the proposal in the New Parenting Topic E-mail.

Responding to the New Parenting Topic E-mail:

Proposed Resolution: If you accept the proposed resolution presented to you in the New Parenting Topic E-mail, acknowledge that you accept the proposal. If you are accepting a proposal, that means you do not have any changes, additions, or deletions; you accept the proposed resolution as

stated in the original e-mail. If you do not accept the resolution exactly as stated, do not respond to this section.

Available times for discussion: From the available times listed in the initial e-mail, choose times you are available. If you are not available at any of the proposed times, please initiate a meeting request using <http://www.needtomeet.com>.

Additional information required: If you need additional information to make a decision on this topic, please explain what information you need. If you need information or documents from the other parent, list that information here.

Additional resources required: If you need additional resources to make a decision on this topic, input from a third-party expert, or if you would like to involve a mediator to discuss this topic please list that person or resource or explain what resources you need and why.

Discussion: The discussion phase is designed for both parents to share information with each other concerning the topic. The discussion phase does not involve argument or debate over the topic and information provided is not for the purpose of persuading the other parent. The purpose is to develop all of the available options for resolution and to provide or request any information necessary for making a decision on the topic. The discussion phase is also the time to perform research, consult with experts, or request second opinions if appropriate. Both parents should feel comfortable discussing the topic at will and therefore should refrain from antagonistic or disparaging languages, attitudes, or

tones of voice. The content of the discussion may include each parent's thoughts, feelings, belief, opinions, likes, dislikes, fears, hopes, desires, and proposals etc. on the topic.

Discussion Methods: Both parents agree to cooperate in using any one or all of the following methods for the discussion phase of each topic:

Recorded Phone Discussion: Both Parents shall establish accounts at www.freeconferencing.com. The parent who raised the topic shall be the conference call host and shall record the discussion. The discussion shall follow the agenda set by the parent who raised the topic. At the conclusion of the call, the host shall download the call recording and provide a copy to each parent.

E-mail Discussion: If both parents agree that the topic should be discussed by e-mail instead of by recorded phone conversation, the person who raised the topic shall be the first to provide or request relevant information to the other parent on the topic.

Mediated Discussion: Both parents agree to involving a mediator when doing so will prevent or reduce conflict, or at any time the other parent requests that a mediator be involved in the discussion. Unless the parents agree otherwise, the default mediator shall be Paul Jozef at www.centerforcc.com or (_____ at _____). The costs of mediation shall be shared equally by the parents.

Initial Discussion: The parent who raised the topic shall reply to the New Parenting Topic E-mail response to confirm the scheduled date, time, and method for the initial discussion. In the contents of this message, the parent shall include an agenda for the initial discussion. A basic agenda is provided here for reference:

Intro: Parent who raised the topic will introduce the topic to the other parent. The intro will review the relevant facts involved and will answer the question: Why are we here?

P1's perspective on the topic: The parent who raised the topic will have an opportunity to provide his or her perspective on the topic and ask questions of the other parent.

P2: specific questions: The other parent will have an opportunity to ask specific questions relating only to the specific facts involved in the other parent's perspective on the topic. The purpose of the questions is to **clarify not to challenge**.

P2's perspective on the topic: The parent who did not raise the topic will have an opportunity to provide his or her perspective on the topic and ask questions of the other parent.

P1's specific questions: The parent who raised the topic will have an opportunity to ask specific questions relating only to the specific facts involved in the other parent's perspective on the topic. The purpose of the questions is to **clarify not to challenge**.

Taking Notes: Both parents shall be responsible for listening to the other parent's perspective and taking notes of any options mentioned that are possible ways to resolve the issue at hand. (any possible ways, not just preferred ways to resolve the issue)

Developing Options for Resolution: The parent who raised the topic will make a list of all of the possible options for resolving the issue.

Supplemental Discussion: complicated or emotionally difficult topics may require more than a single instance of discussion. If the initial discussion breaks down, or is no longer productive because one or both parents need to perform research, or if additional data is required, either parent may bring the session to a close and schedule an alternate time for supplemental discussion.

Last Call: If supplemental discussion is not required, both parents will have a final opportunity to request or provide additional information on the topic. This is also the appropriate time for either parent to request a specific period of time for deliberation before the decision phase begins.

Discussion Is Complete: The discussion phase is complete when both parents agree that they have 1) fully developed all options to resolve the topic and 2) both parents have all the information they need to make a decision.

Deliberation (optional): Following discussion, a short period (24-72 hours) for deliberation may be useful to gain perspective on the topic and to formulate priorities for the decision phase.

Decision: Once both parents are aware of the topic, have discussed options for resolving the topic, and have agreed that both have all of the information required to make a decision, the decision phase can begin.

1. *Agreement:* If both parents have arrived at an agreement during the discussion phase, the decision phase may begin with the initial draft of an agreement.
2. *Negotiation:* Parents shall first arrange a recorded phone call (using [freeconferencing.com](https://www.freeconferencing.com)) for the purpose of negotiating with each other; trading off in an effort to meet the needs of both parents and the child.
3. *Final Decision Making Authority:* If either parent has final decision making authority in the event of an impasse, the parent with final decision making authority shall make the final decision and shall communicate that decision to the other parent in writing.
3. *Mediation:* For topics where Mother and Father have joint legal decision-making authority, if negotiation does not result in an agreement, next the parents will petition conciliation services for post decree mediation or shall hire a mediator to further discuss and assist them in creating an agreement. Costs for mediation shall be shared equally by the parties.
4. *Arbitration (Optional Unless Initialed Below):* If mediation does not result in an agreement, the parents will hire an Arbitrator to decide the issue.

Unless the parents agree or together decide otherwise, the arbitrator shall be Ret. Judge Glenn Davis at www.glenndavismediation.com or (_____ at _____).

A. Mother and Father Hereby Authorize Glenn Davis to preside as an arbitrator over any dispute between the parents which is not resolved through their own efforts at negotiating and mediation. The decision of the arbitrator shall be final and shall be subject to review by the Maricopa County Superior Court for legal error. Costs for Arbitration shall be shared equally by the parties.

Mother and Father hereby opt-in to Mandatory Binding Arbitration:

Father Initial: _____ Mother Initial: _____



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Modern Legal Solutions

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