# An Introduction to a Cooperative System of Family Law and Its Expression in AssessFamilyLaw.org

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*Click HERE for a 30-minute video stream on understanding and creating a cooperative system of family law.*

## *Introduction*

This paper and the evaluative AssessFamilyLaw.org tool it introduces probe the challenging question of what family law systems should consist of to best ensure safety, reduce conflict, build parental cooperation, and protect the children and healthy relationships in families.

The 25 measures suggested in this paper are the product of reviews and discussions with hundreds of judges, attorneys, and other family professionals who have generously shared their thoughts on what should be included, and avoided, in a good system of family law. But, we freely and readily acknowledge that there is no final iteration of these ideas and that the measures recommended here necessarily fall short of either perfection or complete professional consensus.

At the same time, the importance of evaluating family law systems by these 25 recommended measures seems evident from two things. First, there seems general agreement that measures close to these are necessary to adequately protect families in crisis and transition. The words of Judge Michael P. Scopelitis on first reviewing the recommended measures are telling and typical: "There isn't one of these measures we shouldn't have in place today; but we're not going to, and I can't even tell you why."

Second, the overwhelming bulk of the recommended measures are not in place in the family law systems in counties in America. With each of the 25 measures assigned a possible score of 4 for "full compliance," 3 for "substantial compliance," 2 for "moderate compliance," 1 for "slight compliance," and 0 for "no compliance," an overall score between 0 out of 100 (expressed as 0/100) and 100 out of 100 (expressed as 100) can be assigned. Almost all jurisdictions score under 25/100, and many score in the single digits. And, if Judge Scopelitis is correct, on matters that should be in place today.

We hope that judges and the family professionals they work with will be inspired rather than offended by this challenge. If, as our foundation believes, improvements in family law systems can contribute to improved outcomes for children and families, there is every reason to be animated about this opportunity.

### *Framing the Task*

Absent issues of violence and abuse,[1] it is assumed that most divorcing parents can help themselves and their families better by cooperative problem-solving than by suing each other. (For some thoughts on the problems with unexamined confidence in litigation to help families, see Appendices A and B to this article.)

And if that assumption is logical, it is essential to propose measures a good system of family law should include and others it should avoid. This article and AssessFamilyLaw.org posit 25 measures that arguably should shape a good system.

One way to view the importance of this inquiry is as an opportunity to account for, and reverse, what should be regarded as the illogical decision to have a destructive divorce. As this diagram shows, while millions of American parents become involved in destructive divorces, including ones that remain destructive for years, they do so despite many seemingly obvious disadvantages.

| **Future A ("Destructive Divorce")** | **Future B ("Healing Divorce")** |
|---|---|
| Legally complicated | Legally simpler |
| Living in fear for having assigned decision-making to outsiders and the adversarial system | Living in confidence for having learned how to make decisions together as cooperative co-parents |
| Investing one's energy in assigning blame for the past | Investing one's energy in building a better future |
| Beginning by devastating one's children and, through that, devastating oneself | Beginning by saving one's children and, through that, saving oneself |

Two of the most important questions about separation and divorce in our society, therefore, are (1) why so many otherwise intelligent, capable, and even accomplished people make the dubious choice of the Destructive Divorce and even stay committed to that choice for many years and (2) how family law systems may be contributing to that choice.

[1] It is a topic for further discussion elsewhere, but cases of family violence and abuse may be the ones most in need of a cooperative professional response. Victims of domestic violence should have confidence that all professionals involved in their cases make their protection the highest priority.

Certainly no one should underestimate the breadth of the challenge faced by separated and divorced parents in forging successful co-parenting relationships (nor the burden on family law systems to develop ways of assisting those parents). Our experience is that many parents begin their separation journey with pervasive misconceptions about their tasks and that they must negotiate several paradigm shifts to succeed. These may include at least the following.

1. Maybe this isn't a competition between us, but instead the ultimate call to cooperation.
2. Maybe our issues aren't so much legal as personal, emotional, and parental.
3. Maybe our love for our children will be a better guide for us than our legal rights or litigation.
4. Maybe we have been so consumed with our own hurt and fear that our children's needs have
   become invisible to us.
5. Maybe our children are suffering as a result of our conflict—and in ways we haven't noticed.
6. Regardless of what they say to appease each of us, maybe what our children really want and need
   is a predictable, restrained, and courteous relationship between their parents.
7. Instead of being threatened by my children's good relationships with their other parent, maybe I
   actually have a vital interest in supporting those relationships.
8. Maybe my failure to acknowledge and deal with my grief has helped drive our conflict.
9. Maybe we can succeed only by partnering to protect our children.
10. Maybe our children require us to have even better cooperation now that we're separated.
11. Maybe my co-parent's slips are reason for me to be heroically restrained, not to add to conflict.
12. Maybe the failure of our intimate/marital relationship is no predictor of failure in our co-parenting.

The breadth of these changes suggests that, to be of assistance to families in separation and divorce crises, both the legal system and individual judges and attorneys must adapt from a commitment to an adversarial approach to processes devoted to problem-solving. In a public-minded family law system, attorneys and judges, in addition to litigating the small number of cases where danger or other special circumstances require litigation, would have special problem-solving responsibilities in family cases. 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.

One final clarification is in order. The development of cooperative systems of family 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 and (2) to the mandatory and permanent disqualification of the Collaborative Law attorneys should anyone seek a ruling from court. This paper and AssessFamilyLaw.org, on the other hand, are concerned with processes and attorney practices focusing on relationship-building, child interests, and problem resolution. One great payoff of a cooperative system is that while collaborative law touches a special few (those unusual 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 Themes Permeating a Cooperative System of Family Law*

We believe five themes run through and integrate a cooperative system of 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 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.[2]

It can be hoped that 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, more should also realize that a good gauge 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. Cooperative measures in family law should 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 (for example, abandonment, death, active abuse of alcohol or other drugs, or domestic violence or abuse), parents should be helped to co-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.

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[2] 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."

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 respecting 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.**[3] To avoid unintentionally luring parents into the 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 may 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) to educate attorneys on their duty of cooperation,
    c. referrals of parents to complete resources like UpToParents.org,
    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.,

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[3] 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 that judicial rulings will solve parents' dilemmas overlooks at least 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 was surprised not to have seen even one legal issue, nor any controversy that would even be heard by a Japanese court.) 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 as those typically aired in America's divorce courts, 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.

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.[4]

As a general proposition, cooperationist judges can be described as operating more on a case management style than a mere adjudicatory one. 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.[5] 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 the Domestic Relations Counseling Bureau in St. Joseph (Indiana)

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[4] 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: A Call for Clinical Humility and Judicial Vigilance," *Family Court Review*, Vol. 43 No. 2, April 2005, 193; Emery, Robert E., Otto, Randy K., and O'Donohue, William T., "A Critical Assessment of Child Custody Evaluations: Limited Science and A Flawed System," *Psychological Science in the Public Interest*, Vol. 6 No. 1, 1

[5] 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."

County, that all parents 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 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, Michigan[6] and Susan Zaidel of Haifa[7], Israel 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.

### *A Brief Observation on Implementation*

Experience teaches that counties making even modest progress in creating cooperative systems of family law have uniformly had the benefit of good judicial leadership. Wayne and Lake Counties in Indiana are the best examples we know of to date. While leaving plenty of room for continued improvement, their progress has stood out.

While the specific steps to implementation are beyond the scope of this article, it may be helpful to share that a structure of some active well-organized committees has seemed to advance helpful reforms. The following five committees should probably be considered.

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[6] Berecz, Deborah, "Getting Off on the Wrong Foot," *The Michigan ADR Newsletter*, Vol. 7, No. 3 (May 2000).

[7] Zaidel, Susan, "Taking Divorce Out of the Context of Dispute Resolution," *Family Court Review*, Vol. 42, Issue 4, pp. 678-80 (October 2004).

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 four co-parenting classes discussed in measure #7 in www.AssessFamilyLaw.org, 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 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).

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: The Assessment Instrument***

Attached as Appendix C is the list of 25 measures (organized into 10 groups) we think a good system of family law should include. Judges, attorneys, and other family law professionals are now able to quickly assess their jurisdictions' systems and receive a report on them via the website AssessFamilyLaw.org.

We again encourage interested judges and attorneys to view the 30-minute video posted at *HERE* for further explanation of these measures and their implementation.

**Appendix A: Some Common Effects of Divorce Litigation on Parents and Parenting[8]**

| Divorce Factors for Parents | | Parents' True Needs | Tendency of Litigation and Custody Evaluations |
|---|---|---|---|
| 1. | Framing and understanding the challenge of separation and divorce | Sees challenge as mutual: (a) healing, (b) maximizing cooperation; (c) protecting children; (d) protecting the healthy relationships in the family (including the future co-parenting) | Sees challenge as win-lose: (a) defending oneself, (b) defeating the other parent, (c) personal and legal vindication, (d) obliviousness to child and relationship needs in the family |
| 2. | Focus | Children, relationships, and the future | Rights, blaming, and the past; child and relationship needs can become invisible |
| 3. | Position on each other's strengths | Safe to acknowledge co-parent's strengths | Unsafe to acknowledge co-parent's strengths |
| 4. | Position on one's own weaknesses | Safe to acknowledge and address one's own weaknesses | Unsafe to acknowledge or address one's own weaknesses |
| 5. | Capacity to grieve | Able (perhaps with assistance) to acknowledge and move through all stages of grief, including depression/deep sadness | Unable to recognize and process grief; trapped in bargaining and anger (often manifested as, and escalated by, legal conflict) |
| 6. | Interparental interaction | Predictable, cooperative | Unpredictable, competitive |
| 7. | Interparental communication | Open, child-focused, respectful | Incomplete, forensic-focused, disrespectful |
| 8. | Parent's role toward children | Actual Protector—sees children as distinct persons with needs separate from one's own; deep commitment to meet those child needs | Pseudo-Protector—sees children as extensions of the parental fight; consciously or unconsciously misinterprets child needs to win a fight |
| 9. | Decision-making | Joint, cooperative, informed, and honest | Sole, acquisitive, only semi-informed, and often dishonest |

[8] "Divorce litigation" is taken to include not just contested filings, hearings, and trials but also custody evaluations, hostile attorney interaction, or any forensic episode that can be expected to adversely affect the future co-parenting relationship.

| | | | |
|---|---|---|---|
| 10. | Use of law | Law is used as one guide to consider some bare legal minimums; parents' heroic willingness to go beyond minimums is cultivated | Law is used to maximize one's rights and to cap one's duties; parents' heroic willingness to go beyond minimums is extinguished |

## Appendix B: Some Common Effects of Divorce Litigation on Children

| Divorce Factors for Children | | Children's True Needs | Tendency of Litigation and Custody Evaluations |
|---|---|---|---|
| 1. | Place in parents' thinking | Object of everyone's consistent sympathetic focus, attention, and support | "Nonparties"; true needs are either overlooked or distorted in service of parent's fight |
| 2. | Role in the legal proceedings | Complete liberation; no responsibility (real or felt) for adult divorce tasks | Used and lobbied (overtly and covertly); bargained with and over, even interviewed |
| 3. | Availability of parents | Total (or at least steadily growing) availability—separately and together, physically and emotionally | Parental preoccupation with their fight and fears; reduced availability, physically and emotionally |
| 4. | Co-parenting interaction | Parents actively support children's relationships with and good opinion of both parents | Parents undermine children's relationships with and good opinion of other parent |
| 5. | Perception of parental safety | See parents as safe, improving, and competent | See parents as attacking, under attack, deteriorating, and unable to protect themselves or the children |
| 6. | Sense of responsibility for adults' circumstances | Free of any sense of responsibility for the divorce or the adult tasks involved in it; see parents making things better | Consumed with fear, sadness, and felt responsibility to resolve parent conflict (and shame over failing to do so) |
| 7. | Developmental presentation | Can remain children and attend to their develop-mentally appropriate tasks | Developmentally frozen due to immersion in adult conflict and responsibilities |
| 8. | Perception of self | Seeing interparental respect and cooperative capacities, inclined to see themselves as respectable, worthy, and capable | Seeing interparental conflict and disparagement, inclined to see themselves also as deeply inadequate, flawed, and different from other children |
| 9. | View of the world | World is seen as safe, survivable, and supportive of both adults and children | World is seen as unsafe, unpredictable, and hostile to both adults and children |
| 10. | Future view | Feel reassured and progressively confident and optimistic about the future | Feel fearful and progressively insecure and pessimistic about the future |

## Appendix C: 25 Measures of a Cooperative System of Family Law

Following are the 25 measures tentatively identified as important to a good cooperative system of family law. Professionals can evaluate their systems on this hard copy or can use AssessFamilyLaw.org, in which case they will receive a report of their evaluation. Each measure should be assigned a score from 0 for "no compliance, 1 for "slight compliance," 2 for "moderate compliance," 3 for "substantial compliance," or 4 for "complete compliance."

### Group 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 the following links for a divorce example, or a paternity example), a court website like that at www.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, an online workshop, and required co-parenting classes. A sample divorce summons is available Here. | |

### Group B. Responsibly Confronting Domestic Violence and Ensuring Safety

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|---|---|---|
| 4. | The jurisdiction has a written plan enlisting all judges, attorneys, and other family professionals in (1) ensuring safety, (2) responding appropriately to claims of domestic violence, and (3) discouraging false claims. A committee of judges, attorneys, domestic violence experts, and law enforcement representatives 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 by the family bench as bar as a whole and improvements implemented. | |
| 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 to advise the public about the interventions and programs available to protect against domestic violence. | |

### Group C. Educating Parents on the Necessity and Advantages of Safety and Cooperation

| | | |
|---|---|---|
| 6. | All parents in divorce and paternity cases are immediately referred to an online workshop like UpToParents.org or ProudToParent.org and are required to finish their website work, make a copy, and take it to their co-parenting divorce or paternity class. Jurisdictions should choose the online workshops they consider best in their circumstances. | |
| 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, all parents who appear in court on more than one occasion are referred for more intensive assistance. 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. | |

**Group D. Using Early Cooperative Measures**

| | | |
|---|---|---|
| 10. | In addition to the educational resources in measures 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 website work. | |

**Group E. Avoiding Unnecessary Appeals to Court, Custody Evaluations, and Other Adversarial Measures**

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| 13. | Absent special 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 measure 13, including all matters covered in 13(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 measure 13 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 attached to *AssessFamilyLaw* Model Rules for Family Cases. | |
| 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 and (b) list all problem-solving measures already used. | |

**Group F. Assisting Unrepresented Persons**

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| 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 measures 1-12 above, good forms and a good website like that at http://www.in.gov/judiciary/selfservice, clerks trained in helping *pro se* parents, and broadly disseminated advisements on the availability of these resources. | |

**Group G. Committing to Ongoing Professional Education**

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| 17. | The jurisdiction has developed, publicizes, and regularly discusses a Family Attorneys' Pledge of Cooperation (an example is available Here). 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 cooperative family law programs, processes, and professional practices; useful changes are studied further and implemented through subcommittees. Sample topics are available HERE. | |

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

**Group H. Committing to Avoidance of Harm and to Professionals' Focus on Families, Children, and the Relationships They Depend On**

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| 20. | The system and the judges and attorneys working in it share a commitment to (a) doing no harm to families, healthy 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 seriously 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). | |

**Group I. Submitting the System to Regular Review and Improvement**

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| 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 regularly 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. | |

**Group J. Making Improvement Immediate and Ongoing**

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| 25. | The jurisdiction in the last 24 months has implemented one or more significant improvements in its family law system and is working diligently on additional improvements.<br><br>The improvements in the last 24 months include: [insert].<br><br>The improvements being worked on presently include: [insert] | |