



2009 NEWSLETTER

Summer

President's Note

Louise Lee, Texas Chapter President

Special Points of Interest:

Texas AFCC Chapter Annual State Conference
Interventions for Family Conflict with Unmarried Parents
What are the Policy, Legal, and Societal Implications?
October 23-24, 2009
South Texas College of Law
Houston, Texas

AFCC Regional Training Conference
Interventions for Family Conflict: Stacking the Odds in Favor of Children
November 5-7, 2009
Peppermill Resort
Reno, Nevada

47th Annual Conference
Traversing the Trail of Alienation
Rocky Relationships, Mountains of Emotion, Mile High Conflict
June 2-5, 2010
Denver, CO
Sheraton Denver

AFCC Ninth Symposium on Child Custody Evaluations
October 28-30, 2010
Hyatt Regency Cambridge
Cambridge/Boston, Massachusetts

AFCC 48th Annual Conference
June 1-4, 2011
Hilton Orlando Bonnet Creek Resort
Orlando, Florida

Dear Texas AFCC Member:

Welcome to another exciting year with the Texas Chapter of AFCC. It has been a busy year in Texas and I would like to take this opportunity to share with you some of the highlights so far.

First of all, this year, we have an excellent Board of Directors. The members (returning and new) continue to volunteer their time and energy to help us maintain our mission as a state chapter of AFCC. It is my honor to work with them and I cannot thank them enough. For more information about our Board members, or general information about the Texas Chapter of AFCC, please visit our webpage at <http://www.texasafcc.org>.

I just got back from the 46th Annual AFCC Conference in New Orleans and it was another huge success. Even during these difficult economic times, over 800 people registered for the conference. The attendees included professionals from all around the world – Egypt, New Zealand, Israel, United Kingdom, and many more. The plenary sessions sparked some stimulating conversations about the current research on children and divorce, as well as the current trends in family law. As always, the conference program

provided attendees with a variety of workshops throughout the three day conference. Mark your calendars – the 47th Annual AFCC Conference will be in the beautiful city of Denver, Colorado during June 2-5, 2010. If you cannot wait until then, please consider attending the AFCC Regional Training “Interventions for Family Conflict: Stacking the Odds in Favor of Children” in Reno, Nevada during November 5-7, 2009.

Did you know that, in the United States, almost 40% of the babies are born to unmarried mothers? Did you also know, in Texas, the Office of the Attorney General reports that approximately 70% of its caseload (close to one million cases) involves unmarried parents? These statistics are certainly eye-opening for the professionals working with today’s families. This year, the state chapter will be addressing this issue at the Ninth Annual state conference on October 23 – 24, 2009 at the South Texas College of Law in Houston, Texas. Not only are we partnering with the law school again this year, but the conference will also be held in conjunction with the Annual Conference for the Texas Office of the Attorney General’s Access and Visitation Program. This year’s conference theme will be “Interventions

for Family Conflict with Unmarried Parents: What are the Policy, Legal, and Societal Implications?” The conference committee is working on confirming national and state presenters from various disciplines to speak on this issue that affects all professionals working with today’s family law system. We plan on having a packed, full two-day curriculum – and we will, again, feed your mind and your body, so mark your calendars! To learn more about the issue of Unmarried Parents, also known as “Fragile Families,” please read the attached article in this newsletter.

Also, this spring, the Texas Legislature has been busy working endless hours considering new statutes that will affect the families of Texas. Some of the bills involved grandparent access, changes to the parenting coordination statute, siblings’ standing in CPS cases and revisions to the Standard Possession Order – to name a few. More information can be found at <http://www.legis.state.tx.us>.

Lastly, there are many ways you can become more active with the Texas Chapter of AFCC. You can join a committee and/or assist with the annual conference. If anyone is interested in becoming more involved with the Texas

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Chapter of AFCC, please contact David Eaker at david@eakerlawfirm.com, or me at louise@childlawmatters.com. I encourage you to share this newsletter with your friends and colleagues. Spread the word.

I thank you for the time-consuming, endless, and sometimes unappreciated, but often rewarding, work that you do for the children and families of Texas. I look forward to seeing everyone at the conference.

Best Regards,



Louise Lee
President, Texas Chapter of AFCC

LEGISLATIVE UPDATE FOLLOWING THE 81ST LEGISLATIVE SESSION

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The 81st Legislative Session is complete and several new statutes have been enacted and made into law that will affect our membership. Without going into detail on every statutory change in the Family Code or elsewhere affecting our work, this short article will attempt to highlight key changes you should know about.

Child's Preference of Person to Designate Residence REPEALED.

I believe the heading speaks for itself. But keep your eyes open for the next couple years as we see the impact of this being repealed. Will we see more attorneys bringing children to the courthouse to meet with the judge (a new requirement - by default - in modifications filed within a year)? Will children be brought into suits through other means? Stay tuned. But for now, the dueling affidavits should go away as well as the belief that 12 year olds have the absolute right to choose between their parents.

The Standard Possession Order Revised – or was it?

Before you look at 153.312 in your new annotated code book and think the legislature has done away with the *expanded* standard possession order, recognize that it has merely been reworded and moved around. Section 153.312 still has the same standard possession order as before the 81st session but the election to do exchanges at any time other than 6:00 p.m. is now found in section 153.317(a)(b).

Economic Contribution removed from the Code.

Back to the good ole days (or were they) of equitable reimbursement. Commencing with TFC 3.401, the code has been heavily revised to remove economic contribution. I do not intend to explore the effect this will have on marital property claims in Texas, but urge you all to review these revisions which take effect (for the most part) for cases filed after September 1, 2009.

Issues Relating to Military Deployment

This clearly was a hot topic on the minds of the legislators this session with numerous new statutes relating to the possession and access of children of service members while their parents are deployed. If you have cases involving service members, you need to read in detail the various statutes that were revised in this last session as they are numerous and wide ranging.

Parenting Coordinators – Family Code Section 153.601, *et seq*

The Parenting Coordination statutes remain intact with minor revisions. Parenting Coordination remains a confidential dispute resolution process. Parenting Coordinators are now specifically subject to the Ethical Guidelines of Mediators with the failure to comply becoming a statutory ground for removal. The most substantive change is that licensed attorneys are now qualified to serve as parenting coordinators provided they satisfy the same standards required to mediate family law matters by appointment.

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The new animal: Parenting Facilitators – Family Code Section 153.601, et seq

The 81st legislative session introduced a new animal to our family of statutorily recognized professional dealing with children's issues: the Parenting Facilitator. The critical difference between the Parenting Facilitator and the Parenting Coordinator lies in the reporting requirement of the Parenting Facilitator and the ability of the Parenting Facilitator to testify in trial as this role is not confidential. For everyone working with high conflict cases, I urge you to read the statute in detail so that you may properly review the choices in our expanded tool box when making a decision as to how best assist the family before you.

Authorization Agreement for Non-Parent Relative -- Family Code Chapter 34

Drawing on the appeal of the durable power of attorney as an alternative to a guardianship proceeding for older adults, the sponsors of S.B. No 1598 intended to create a statutorily recognized mechanism by which parents can bestow decision-making rights upon third-party relatives thereby avoiding the necessity of filing a SAPCR. This authorization agreement may only be between a parent and a child's (1) grandparent (2) adult sibling, or (3) aunt or uncle; therefore, this is not applicable for step-parents or unrelated third-parties. Under the statute, a parent may delegate certain delineated parental rights and third-parties relying on such an authorization are granted protection.

Specific statutory requirements for the authorization to be valid are set forth (items that must be included and warnings to be stated), and the authorization is not valid if there is any pending litigation or prior orders in effect regarding the child (barring Court approval of the agreement).

Of interest to note is that TFC 34.007(b & c) is very clear that such an authorization does not bestow "legal custody" of the child upon the relative nor does it "confer or affect standing or a right to intervene" in a SAPCR. Does this mean that a relative caring for a child under the authority granted by one of these authorizations for more than six months will be deemed to not meet the general standing requirements since the care they were providing was pursuant to such an authorization? That will be an interesting question.

David Eaker, JD
President-Elect, Texas Chapter, AFCC

Association of Family and Conciliation Courts Texas Chapter In conjunction with the SOUTH TEXAS COLLEGE OF LAW

Ninth Annual Texas AFCC Statewide Conference*
October 23 & 24, 2009
South Texas College of Law
Houston, Texas

Interventions for Family Conflict with Unmarried Parents What are the Policy, Legal, and Societal Implications?

Once upon a time, it was first comes love, then comes marriage, then comes the baby carriage. Today, four out of ten children are born to unmarried parents and this new path to family formation presents unique challenges to a family law system. Locally, the Texas Office of the Attorney General establishes about 50,000 orders every year for parents who are not married through a Suit Affecting the Parent-Child Relationship (SAPCR) process. Last year in Texas, there were about 170,000 non-marital births.

Are you, the courts, the lawyers, parenting coordinators, mediators, and a host of other family law professionals, informed and equipped to meet these challenges? Today's Family Law System reflects societal changes from the 60's, 70's, and 80's – but the overwhelming growth of non-marital births has been a more recent trend. How can you learn about your profession's role in assisting these forming families?

Come to the Ninth Annual Texas AFCC conference October 23 and 24, 2009, at South Texas College of Law in Houston. At the *Interventions for Family Conflict with Unmarried* Conference, you can learn:

- The demographics and the reasons parents opt out of the traditional marriage/birth route
- How Texas currently educates these parents about their rights and responsibilities
- Tips for mediating/co-parenting with unmarried parents
- Parenting programs designed for forming families
- How parents can navigate these unfamiliar roads to legal parenthood
- Gaining legal rights, accessing legal remedies for unmarried parents
- Challenges of representing unmarried parents

AFCC brings together experts from multiple disciplines to facilitate learning about children and families. This diversity leads to provocative discussions and practical solutions for working with forming families. For more information, go to www.texasafcc.org.

*Annual conference for Texas Office of the Attorney General Access & Visitation grantees who provide a variety of cooperative parenting services throughout Texas

Detailed Information About Our

Ninth Annual Texas AFCC Statewide Conference
October 23 & 24, 2009
Houston, Texas

Interventions for Family Conflict with Unmarried Parents What are the Policy, Legal, and Societal Implications?

Featuring Keynote Speaker, Amos Smith, CEO of Community Action Agency of New Haven, New Haven, Connecticut

“The Changing Dynamic of a New Economy and Its Impact on Fathers, Families, and Courts Support Services”

The changing landscape in America is accelerating with a pace and speed unlike anything of the past. The concept of the nuclear, extended, and blended family concepts are also exploding. The courts have been asked to step in to resolve or mediate child support, paternity, and supervision. Often times the decision made within the courts have been instituted without sufficient consideration for the impact of community systems or the deteriorating economy. If we are to approach these old problems in light of the shifting and changing dynamics of work, family, and community – community institutions can and must be considered as major supports for fathers and families in order to secure the desired outcomes for children.

The remaking of new designs that provide maximum support and development of the child is what we seek. The courts and community can become effective tools that bridge the gap for children as parents deal with the overwhelming stressors of making it in a new economy. Ultimately, we are all responsible for bridging that gap and helping our children succeed!

Also featuring David Finn, Psy.D. – Back by Popular Demand

Dr. David Finn is the clinical director of Associates in Human Development Counseling, LLC and a licensed psychologist. Dr. Finn specializes in working with children and families. In addition to his regular clinical work, Dr. David Finn is regularly appointed as a Court's Expert in helping to determine custody and visitation issues for children whose parents are divorcing. He has delivered seminars on parenting, domestic violence, and other related topics to both parents and professionals both locally and nationally.

HOTEL INFORMATION

Hilton Americas – Houston Downtown

1600 Lamar Street // Houston, Texas 77010 // 713-739-8000 // Reservations: 1-800-236-2905
Group: Texas AFCC Conference
Special conference rate is \$122.00/night until 10/8/09
NOTE: Cancellations also must be made by 10/8/09 with this special conference rate

Marriott Residence Inn Houston Downtown

904 Dallas Street // Houston, Texas 77002 // 832-366-1000 // Reservations: 800-331-3131
Group Code / Name : AFCC
Special conference rate is \$105.00 plus 17% tax per night until 10/1/09

At Residence Inn by Marriott, we offer spacious suites all with the convenience of a fully equipped kitchen, separate living area, complimentary daily hot breakfast buffet and complimentary high-speed internet access.

Marriott Courtyard Houston Downtown

916 Dallas Street // Houston, Texas 77002 // 832-366-1600 // Reservations: 800-321-2211
Group Code / Name : AFCC
Special conference rate is \$100.00 plus 17% tax per night until 10/1/09

At Courtyard by Marriott, we offer spacious guest rooms, featuring a comfort sitting area, large work desk, complimentary high-speed internet access and in-room coffee maker.

Don't miss this year's ALL NEW SILENT AUCTION Friday evening of the conference

Confirmed items include:

- Non-holiday week at Villa Adora Diving Resort in Cozumel for two with five days of diving for two (airfare not included)
- Day of sailing on Galveston Bay for up to four people, including lunch
- Wine tour
- And much more to come!!!

Interested in Exhibiting at the Conference?

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EXECUTIVE COMPENSATION AND DIVORCE A GUIDE TO THE RULES AND PROCEDURES

By Patricia Barrett CFP CDFA

Editor's Note: *In this issue we present the final installment of a multi-part series on financial planning for divorcing executives and their spouse. This article is not intended to provide specific advice on family law cases, but is an overview of financial issues that commonly arise in divorces of executives and their non-employee spouse.*

Dividing the 401k Savings Plan (Defined Contribution Plan):
The most desirable method for division of these plans (401k and 403b) is to roll the Alternate Payee's share to an IRA Rollover account in her separate name. A separate QDRO is needed for dividing these. It can specify either a specific dollar amount or a percentage as of a certain date. The securities inside of the plan are divided proportionately, awarding each spouse a percentage of each investment.

If divided pursuant to divorce, ERISA provides for an exemption from the usual 10% penalty for withdrawals before age 59.5. This can be useful when funds are required for attorney's fees or relocation expenses. For the amicable divorce, the wife sometimes requests a larger withdrawal at time of rollover in order to meet immediate needs of the husband, as well. The owner of the plan does not have this exemption from the 10% early withdrawal. A CPA or the CDFAs can calculate the taxes to be reimbursed to the wife, since the full distribution will appear on her 1040 return.

For the executive, the most favorable feature for a QDRO is to have unpaid plan benefits revert to them should the Alternate Payee predecease. This is usually accomplished through the Shared Interest method of division. It is also possible with the Separate Interest method if a reversionary clause is included in the QDRO. The latter provides for the wife's benefit to revert to the executive should she die prior to receipt of benefits.

For executives who have worked at a firm for a longer time than they have been married, rather than the Coverture fraction used for the pension, the separate property interest is usually assumed to be the value upon the date of marriage. Note, however, that each state can specify different statutes for this calculation. For instance, in Texas, since September of 2005, it is possible to trace assets to establish the separate property interest. If certain assets within the plan were owned prior to marriage, the growth on

those assets could be deemed separate, as well as subsequent assets purchased with the funds.

NON-QUALIFIED PLANS:

The term "Non-qualified plans" simply means that they are not available to all employees and have different tax treatments. These are not divided using a QDRO, since not subject to ERISA rules. Many attorneys consider some of the plans to be compensation for future services and not divisible during divorce. Oftentimes, the executive's employment contract can provide insight into whether the plan is payment for past services (divisible in divorce) or for future services.

Employee Stock Option Plans:

Employee stock option plans are one type of plan where the employee must complete future service in order to be "vested" in the grant. Typically, a grant will vest over a period of three to five years. This could result in options vesting one year after the grant, two years, after, etc. Some states may consider all stock option grants to be community property, no matter if vested or not. Other state statutes may consider unvested options to be separate property. Or, the subject may be negotiated.

Like in Texas, some states take a blended approach, where unvested options' characterization is calculated with a fraction of the number of days from divorce until vesting versus the number of total days in the vesting period. This results in a single grant having several different levels of separate and community, depending on the vesting date. Note that other states may allow such a prorated approach to the characterization of stock options, as well.

Example assuming a 3/31/07 date of divorce:

	Grant Date	Vesting Date	Number of Days Until Vested	Total Days, from Grant Until Vesting	Shares Granted	% Separate	Separate Property Options
1	05/17/03	Vested	0	1,095	2,550	0.00%	0
2	05/25/04	05/25/07	55	1,095	2,250	5.02%	113
3	05/25/05	05/25/08	420	1,095	1,750	38.36%	671
					6,550		784

Line 1 shows a grant dated 5/17/03 that is fully vested. These three grants all have a three year cliff vesting. Since fully vested 0% is considered separate property.

Line 2 shows a grant dated 5/25/04 that vests on May 25, 2007, 55 days following our assumed date of divorce. This results in 5.02% of the grant considered separate property, or 113 shares out of 2,250.

Line 3 illustrates a grant dated 5/25/05 that vests on 5/25/08, 420 days following the assumed date of divorce. This results in 38.36% separate property interest, or 671 shares.

The longer the period of time from divorce until vesting, the greater the percentage of separate property.

Note that Texas also considers options granted before the marriage to be partially separate, determined by a fraction applied to the number of options within the grant. The apportionment fraction is established using the date of the marriage minus the date of the grant, divided by the date of vesting minus the date of the grant. The numerator is the period from the date the option was granted until the date of marriage. The denominator is the period from the grant date of the option until the vesting date.

This methodology does not distinguish between Incentive Stock Options (qualified for tax purposes) and Non-qualified Stock Options (taxed as ordinary income from employment).

The majority of companies do not allow stock options to be transferred to another party (except at death), causing problems when dividing. Even if the wife is awarded a percentage of the stock options in the decree, she is unable to truly own them. Instead, the husband usually acts as a constructive trustee, required by court order to exercise options as requested by the wife. The IRS has issued a ruling wherein the wife is taxed for the profits through a form 1099 issued by the company. The husband, however, still pays the FICA tax. The decree can require that this be reimbursed by the wife.

Valuation of Stock Options in Divorce:

There is much debate as to the proper method for evaluating stock options during divorce. The "intrinsic" value or the current value if all exercised does not include unvested options, leaving them with a zero value. While this is favorable to the executive, the wife's attorney may argue that the unvested options also have a value even though not currently exercisable. The intrinsic value also ignores the "time value" of the options, since even vested options, if having a period of years until expiration, have an increased value due to this factor.

One method sometimes used to establish a more realistic value for options is called Black-Scholes Option Pricing Model. This is a complex algebraic formula originally created to value stock options traded publicly. The formula has six factors:

- | | |
|--------------------------------|--|
| 1) Current stock price | 4) Time until expiration |
| 2) Grant price | 5) The current risk-free rate of return at time of grant |
| 3) Dividend yield of the stock | 6) The volatility of the stock |

While this pricing model is frequently used in divorce cases, it is arguably quite inaccurate for the valuation of employee stock options. It was developed for European-style options that are exercisable only at their expiration date, while ESOs can be exercised at anytime from the date of vesting until expiration (typically 10 years from grant date). Even more important, the Black Scholes model tries to estimate a value based on an assumed future level of volatility, which is undoubtedly going to prove inaccurate.

For the executive owning many fully vested options, some attorneys have successfully argued that their value should be discounted for lack of marketability and risk of forfeiture. Needless to say, this is an issue to be discussed with your attorney.

Restricted Stock:

Restricted stock is granted to executives with strings attached, usually requiring them to remain employed by the firm for a period of years. Alternately, some companies require certain goals be achieved in order for vesting to occur.

Again, you or your attorney can argue that the restricted shares are worth nothing unless you continue to work for the company; that they are for future services and should not be divided during divorce. The wife's attorney, of course, will disagree.

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In Texas, we can apply the same apportionment system given above for employee stock options in order to establish a separate property interest. This is based on a greater separate interest for a longer period of vesting still remaining. If the grant has a three-year vesting and was granted one year before divorce, 2/3 could be considered separate property.

Due to the lack of transferability of restricted shares, it will be necessary to provide an offsetting asset to the wife, leaving the restricted shares on your side of the ledger. Even assets without any current value can be considered to be of value when divorcing, since of value to one spouse in the future.

Excess Compensation Plans

The excess compensation plan is also known as a "supplemental executive retirement plan" or SERP. These plans seek to allow executives to continue to receive retirement plan contributions and to make contributions in excess of that allowed under ERISA. Under ERISA, only earnings up to \$225,000 (2007 adjusted limit) may be considered for contributions to 401k and pension plans. While the excess compensation plan is not "qualified", providing current tax deduction, the company is allowed to discriminate in favor of executives over the rest of the employees.

When dividing during divorce, the methodology given above for qualified plans can usually be applied, carving out the portion earned before marriage, for instance. However, most executives did not contribute to these SERP plans until after many years with the company, allowing an argument by the wife that the full amount should be considered community.

From the writer's experience with these SERP plans, most companies will not allow them to be divided during divorce. It is necessary, instead, to award other assets to the wife to compensate for her interest in the SERP.

Bonuses:

Most executive bonuses are paid following the end of a year of service and are based on performance and other factors during the preceding year. Even if this bonus is actually received in March of 2007 and you are divorced in January of 2007, it is normally considered community and to be divided with the wife.

However, sometimes a signing bonus is provided when the executive accepts a position. For this situation, it is necessary to review the employment contract to determine whether the bonus is given for future services. For instance, if the contract requires the husband to work five years or else repay a pro-rata portion of the bonus, it could be argued that a portion is to be earned in the future and is not divisible during divorce. Without the chance of forfeiture, it would be difficult to overcome the presumption that the bonus was just a reward for executing the contract. Again, consult your attorney for guidance in your state.

Life Insurance:

Frequently, the wife's attorney will want to include a requirement in the decree that a life insurance policy be maintained on the executive with the wife as beneficiary. This is normally done to collateralize the child support or alimony payments, in case of his premature death.

While employer sponsored life insurance cannot be transferred during divorce, the decree can require that the wife be retained as beneficiary until all alimony and/or child support payments have been received by her. If other life insurance policies are used for this purpose, it is possible to transfer the ownership of the policy to the wife so that she can ensure she remains the beneficiary and that the premiums are paid to keep the policy in force.

These issues become a matter of negotiation, possibly even suggesting that the executive be allowed to maintain a life insurance policy on the wife, as well, since he would possibly incur great expense in replacing her care of the children.

Conclusion:

While the vast majority of financial advisors have little knowledge of divorce and executive benefits, it is often possible for them to partner with a Certified Divorce Financial Analyst who has expertise in the area of executive benefits. If the CDFA works by the hour to assist divorcing individuals, he or she can prove a valuable ally as you walk that tightrope with your divorcing clients. The CDFA can provide financial tables and detailed analysis clarifying the client's situation to allow them to clearly understand their options and to make informed decisions.

At a time when his clients are making decisions that will affect them for the rest of their lives, the CDFA can increase the chances of the financial advisor retaining both halves of the investment account and possibly end up with a new IRA rollover, as the divorce concludes.

Patricia Barrett, CFP CDFA

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UNDERSTANDING LOW-INCOME UNMARRIED COUPLES WITH CHILDREN

Paula England and Kathryn Edin

One third of babies born in the United States today have unmarried parents (Carlson et al. 2004), up from about 5 percent in 1960 (Moore 1995). The more economically disadvantaged couples are, the more likely they are to be unmarried when their children are born (Ellwood and Jencks 2004; Moore 1995). Thus, studying the relationships of couples who have children outside marriage helps us understand a large group of low-income couples. This briefing paper summarizes findings from a new book studying such couples, entitled *Unmarried Couples with Children*, edited by Stanford sociologist, Paula England, and Harvard sociologist Kathryn Edin, published in fall, 2007 by Russell Sage Foundation. Together with our assistants, we conducted in-depth interviews with unmarried couples right after their baby was born, and followed and reinterviewed them until their baby turned 4, whether they married, stayed together unmarried, or broke up. Parents were interviewed together and apart.

Many of us have a stereotypical view of a woman having a baby out of wedlock—we assume that unmarried fathers are long gone from the mothers' lives by the time of the birth. But, in fact, nothing could be farther from the truth. A large national survey of non-marital births in 20 large urban areas, the Fragile Families and Child Wellbeing Study, found that over 80% of unmarried parents were romantically involved with the other parent when their baby was born, and about half of the couples were living together at the time of the birth. Of mothers romantically involved with the father at the birth, 78 percent of the cohabitators and 49 percent of those not living together said they saw at least a good or almost certain chance that the two would marry sometime in the future (from mothers' reports; Carlson and McLanahan 2002). An even higher percent of fathers predicted that the couple would marry eventually. But, in fact, most couples did not marry within a few years and many broke up. Among the approximately half of the unmarried parents in the larger Fragile Families survey where the parents were cohabiting at the birth, five years after the baby is born, almost half had broken up and only about a quarter had married. Among the approximately 30 percent of unmarried parents who are romantically involved but not cohabiting when their baby is born, over three quarters were broken up and only 7 percent married to each other five years later.

Our qualitative study of 48 unmarried couples who shared a non-marital birth in 2000 is embedded in the Fragile Families study, discussed above, which sampled thousands of births in hospitals in 20 cities, interviewing both parents where possible. We drew the couples for our study from among the couples in the larger survey in three of the 20 cities. Our study was called the "TLC3 Study" (for "Time, Love, and Cash Among Couples with Children"). Our study included only couples who were still romantically involved when their baby was born (as mentioned above, national data show this is true in about 80% of non-marital births). The average household income of TLC3 couples who were cohabiting was quite low, \$22,500. Twenty-nine percent of fathers and 26 percent of mothers had neither a G.E.D. nor a high school degree. Thus, like unmarried parents nationwide, this is a very disadvantaged group.

Are pregnancies planned? Our study started by asking whether the pregnancies that led to the non-marital births that our respondents had experienced were planned, unplanned, or in between.^[i] While a small number (12%) of the non-marital conceptions are planned, most are not. Those that were planned were almost universally to couples in serious relationships. Twenty-two percent were the result of inconsistent contraception, most of these to couples in serious relationships as well. These couples often use contraception consistently when their relationship is new, but let their vigilance lapse when the relationship becomes more serious. Eighteen percent had used contraception but it failed; another five percent had thought they were sterile, so weren't contracepting. One of the most important findings as that roughly another 25% were neither planned nor unplanned, but in between. That is, there is a continuum of how

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“intended” pregnancies are. Individuals characterizing the pregnancy as “in between” are almost always in a serious relationship and want children together eventually. Unsure that their current circumstances are ideal, their ambivalence leads them to leave conception to chance.

A quarter of the pregnancies were truly unintended, but occurred when couples were not contracepting. These individuals did not want—even ambivalently—to have a child now, but somehow didn’t align their contraceptive behavior with their wishes. These are the pregnancies where abortion is most often considered or pursued. The group of parents having these pregnancies has the least efficacy in achieving their own goals and some are caught up in lifestyles that are risky in many ways.

Overall, we identified two important factors affecting whether unmarried individuals have children. One is how serious their relationship is. The more serious it is, the more likely they are to have a child, even while unmarried, and to have a pregnancy that is truly planned or at least “in between” planned and unplanned. The second factor is individuals’ degree of efficacy in “getting it together” to contracept consistently when they truly did not want a pregnancy.

Will They Marry Later? Do couples who are together but unmarried when their baby is born aspire to marriage with this partner? Most truly do, but not many tie the knot. So we explored what they say about what is keeping them from marrying.^[ii] For some, problems with the relationship held them back. But the even more common—almost universal—response by men and women to our questions about what it would take for them to decide to marry was that they were waiting to meet certain economic standards. Of course, the idea that couples need to be able to afford to set up a household and support a child before getting married has long been traditional. What is interesting about today’s unmarried couples who’ve had a child together is that they articulate this standard for marriage even when they have already started living together and have had a child together. Indeed, couples who hadn’t married four years after their baby’s birth, but hadn’t broken up either, still clung to this bar as a major reason they hadn’t married yet. What parents meant by this economic bar was usually something like wanting one or both of them had a good job so they didn’t need family or friends or the government to give them money to pay all their bills each month. Based on how they described their economic situation, the study classified parents into those who met this bar by four years after the baby was born and those who did not. Most of the parents in the study did not meet this economic bar by four years after the birth, and did not marry. But 78 percent of those who met this bar married, while only 19 percent of those who did not meet the bar did so by four years after the birth. Given their values and criteria, the inability to get decent paying jobs is a real constraint to marriage among low income unmarried parents.

What Do They Fight About? We also looked at what issues create conflict for low-income couples with children.^[iii] After the interviews with the couples still together three and four years after their baby’s birth, interviewers asked couples to identify the two most important issues that they don’t see eye to eye on. The video camera continued to run while the interviewer left the room for 10 minutes, leaving the couple to discuss the issue. The four issues that came up most often were emotional attention and companionship, child discipline, housework, and money issues. Earlier studies suggested that it is only in the middle class that women expect emotional intimacy and shared activities with men. But this has clearly changed. The low income women in our study complained bitterly that their men don’t listen to them or talk to them enough, and don’t spend “quality time” with them. Women also complained about men spending time “on the street” or with male friends or kin rather than with them. Child discipline was another hot issue. Men generally wanted a stricter regime than women. Either Dad wanted Mom to run a tighter ship while doing the child minding that they both agreed was her job, or Dad himself wanted to discipline children (especially sons) more harshly than Mom thought was appropriate.

Fathering When Dad Lives with Mom.^[iv] We also zeroed in on how involved Dads are in taking care of children when the couple is living together. The worst couple relationships with the most conflict had the least and lowest quality father involvement. However, at the opposite end of involvement, the very most involved fathers, who did at least half the child care, were not the ones with the best (nor the worst) relationships. The most involved dads were in couples where she was employed and he was unemployed. His non-employment was not usually a based on a choice that he would be the one to stay home with children, but a result of not finding a job or being employable. The care work done by these fathers is appreciated by the mother, but the men often have economic and behavioral problems that strain their relationships. When men are employed, the father’s primary role is typically as a “playmate” to the child who does actual care mostly only when mothers scrutinize and supervise their work.

Step Parenting.^[v] Many of the cohabiting couples in our study lived in a household including not only the baby they had together, but also Mom’s child from a prior relationship. Often Dad also had a child from a prior relationship, although typically this child was living with his female ex-partner. Jealousy is often the cause of conflicts in these “blended” families. When Dad goes to see his

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other children by a previous woman, his current partner is jealous of the time away from her and her kids, and she may worry that he will get sexually and romantically re-involved with his "ex." Dad, too, may be jealous about his new partners' dealings with her "ex" with whom she has a child, for example, when he comes by to pick up children for visitation. Among couples with blended families, those who married each other were those in which Mom's prior partner was no longer an active father to her kids and Dad was no longer involved with any of his kids who live with their mother. This poses a dilemma—it appears that a good way to encourage marriage among new unmarried parents is to encourage fathers to be "dead-beat dads" to their kids by former partners, hardly a compelling policy suggestion. What is best for his kids by one partner may not be best for his kids by the new partner.

Jealousy and Cheating.[vi] American couples in committed romantic relationships overwhelmingly expect sexual exclusivity regardless of their marital status, though infidelity is higher among unmarried than married couples. More than half (58%) of the unmarried couples in our study had experienced at least one instance of infidelity over the course of their relationship. Most of the time it was men who cheated, though some women did as well. Incidents of infidelity often occurred around events that brought the future of the relationship into question, such as the incarceration of one partner or a major argument. If there was chronic infidelity, the relationship seldom survived. Sexual jealousy and sexual mistrust are even more pervasive than reports of actual infidelity, with at least one of the partners in three quarters of the couples reporting some such issue.

What Leads To Breakups Among Unmarried Parents?[vii] Respondents who had broken up with the other parent reported infidelity, arguing, verbal and physical abuse, lack of love and attention, and substance abuse as primary reasons for their break ups. Often those who broke up had multiple problems. Relationship quality is central, and men's bad behavior is key. It is almost always women who initiate the breakup, and the men who move out. Although economic problems figure prominently in why couples say they don't get married, economic problems were never central to their stories of how the breakup occurred. Not surprisingly, couples who broke up had much worse relationships at the outset. Indeed, it appears that the bad relationships were usually bad from the beginning, and over half the breakups that occurred within four years actually happened in the first year after the baby's birth.

Do Unmarried Dads Pay Child Support After a Breakup?[viii] We found little evidence of fathers with decent jobs who could support their children but choose not to pay any child support—the stereotypical "dead beat dad." However, this may be at least in part because child support systems are now sufficiently stringent that those who are employed have support automatically garnished from their wages. We don't know how many of these fathers would have paid in a less stringent regime. For those not paying, both mothers and fathers point to incarceration, unemployment, and a lack of resources as reasons for the low levels of support. However, fathers portray their contributions in a much more positive light than their female ex-partners do. Most young mothers without support from fathers are relying on a new partner to help provide for their families by the time their babies were 4 years old. However, we couldn't really tell whether having the new partner caused her to stop trying to get her former partner to pay child support, or whether the lack of his child support increased her motivation to find a new partner; the causal order was unclear.

Do Dads Visit their Kids After Breakup?[ix] At the time of a child's birth, most unmarried fathers are dedicated to staying involved with their child, and most mothers want them to as well. Yet studies consistently show that as children whose parents are separated grow older, many fathers disconnect, particularly those who were never married to the mother. Our study considered two sides of the story of how fathers become uninvolved, offering a rare "he said, she said" account. Fathers blame mothers, and charge them with "gate-keeping," while mothers say there are good reasons for limiting fathers' access to their children. Mothers offer three main justifications for their gate-keeping: previous inconsistency in visitation, safety concerns about the dangers associated with the father's lifestyle (usually his drug or alcohol use), and the inability of the parents to get along after the breakup. While one might assume that safety concerns would prompt mothers to completely shut fathers out, this was not so. In fact, fathers whose contact was limited for these reason alone often had some degree of contact, though mothers controlled when the contact occurred. These mothers usually arranged for the fathers to visit in the mother's home. It was when the two parents just couldn't get along that fathers were most likely to be shut out completely, sometimes through the mother getting a restraining order against the father. Some fathers claimed that these orders were obtained fraudulently. Most mothers who "gate-keep" their children's fathers out have re-partnered, and the existence of a new man is straining an already tenuous co-parenting relationship. In cases where no gate-keeping is evident, mothers say they value the role the father plays in the child's life and they are sometimes reliant on the fathers for childcare.

Our Study Compared To What We Know About Low Income Families in Past Decades. In earlier decades, it was common for unmarried low income couples to find the woman pregnant out of wedlock, just as our unmarried sample members did. But intercourse typically would not have started until relationships were more serious (Hollingshead 1949). Within or outside of marriage, though, having children only when planned has long been more frequent in the middle than working and lower class (Rainwater 1960, 1965). Like decades ago, it is common today for low income couples to get pregnant without explicitly planning it, inside or outside marriage. One thing contributing to the increase in non-marital births is the reduction in how often pregnancies prompt couples to

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move to marriage or to stable common law arrangements (Moore 1995; Akerlof et al. 1996). The extent to which the sexual revolution reduced shot-gun marriages underscores the degree to which these marriages in earlier eras reflected the shame entailed in having premarital sex revealed, shame that was heaped particularly on the women.

Our study suggests that the meaning of marriage has changed. As long as they are still romantically involved, unmarried parents almost always see marriage to the co-parent as something to aspire to, but they don't want to marry until certain relational and economic bars are met, even when they are already living together and have a child together. In contrast, in earlier decades, one virtually had to be married and have children to "count" as a social adult (Morland 1958). Today, marriage is seen as more optional, but its symbolic value has increased (Cherlin 2004; Edin and Kefalas 2005). People feel it is worse to marry before the couple's relational and economic status are above a certain threshold than it is to have a child while unmarried (Edin and Kefalas 2005; Gibson et al. 2006; Edin 2000). Rising emotional standards for marriage are a continuation of a long-term trend; Coontz (2005) argues that the trend dates all the way back to the love revolution of the eighteenth century. But, while love was the ideal, ethnographies of the 1950s and 1960s pointed out how little companionship and shared leisure there often was between low-income spouses (Bott 1957; Gans 1962). Women often resigned themselves to little mutuality and considered themselves lucky if their men brought home most of their paycheck and didn't beat them (Komarovsky and Phillips 1962; Rubin 1976). Today's low income women, black, white, and Hispanic, clearly have much higher relationship standards. Indeed, in our study, women's top complaint was that men didn't talk to them enough, show enough affection, and spend enough "quality time" with them. It is probably not that today's relationships among low income couples are worse than those of prior decades. Part of the problem is that the earnings of men in the bottom half of the class hierarchy have fallen since the 1970s (Bernhardt et al. 2001), but this explains only some of the retreat from or delay of marriage (Ellwood and Jencks 2004). Rising cultural standards are also key to the explanation. As modest as the standards of the couples we study here seem, they are undoubtedly much higher than those held by their counterparts decades back (Edin and Kefalas 2005). Given that relational and economic problems are worse toward the bottom of the class structure, as they have always been, today's rising emotional and economic standards for marriage have left many low income couples in the situation where neither their relationships nor their budgets meet their own standards for marriage.

Notes:

[i] Whether the pregnancies were planned is discussed in the chapter entitled "Forming Fragile Families: Was the Baby Planned, Unplanned, or In-Between?" by Kathryn Edin, Paula England, Emily Shafer, and Joanna Reed. Respondents were asked about all their nonmarital births, abortions, or miscarriages.

[ii] What unmarried parents say about what is keeping them from marrying is explored in the chapter entitled "Expectations and the Economic Bar to Marriage Among Low-Income Couples" by Christina Gibson-Davis.

[iii] The content of relationship conflicts was explored in the chapter entitled "Everyday Gender Conflicts in Low-Income Couples," by Paula England and Emily Shafer. This chapter used the unmarried couples as well as a comparison sample of married couples who had babies in the same urban hospitals, since the content of their conflicts was not significantly different.

[iv] This topic is examined in the chapter entitled "'#1 Father or Fathering 101: Couple Relationship Quality and Father Involvement When Fathers Live with their Children" by Kathryn Linnenberg. It too included married and unmarried parents.

[v] Households with unmarried step-parents are explored in Lindsay Monte's chapter entitled "Blended But Not the Brady's: Navigating Unmarried Multiple Partner Fertility,"

[vi] Cheating and jealousy about possible cheating are discussed in the chapter by Heather Hill entitled "Steppin' Out: Infidelity and Sexual Jealousy among Unmarried Parents."

[vii] The stories of the couples in the study who broke up are chronicled and analyzed in the chapter entitled "Anatomy of the Breakup" by Joanna Reed.

[viii] Child support payment is explored by Katherine Magnuson and Christina Gibson-Davis in the chapter entitled "Child Support Patterns Among Low-Income Noncustodial Fathers."

[ix] This is explored in the chapter entitled "Gate-keeper Moms and (Un)Involved Dads: What Happens After a Breakup?" by Amy Claessens.



IS YOUR CHILD REJECTING ONE PARENT? In divorce or separation, 10% - 15% of children express strong resistance to spending time with one of their parents – and this may be increasing in our society. It may be the father or mother. It may be the parent the child “visits,” or the parent where the child lives. Is this the result of abuse by the “rejected” parent? Or is this the result of alienation by the “favored” parent? The idea that one parent can alienate a child against the other has been a big controversy in family courts over the past 20 years, with the conclusion that there are many possible causes for this resistance. Most courts take reports of alienation very seriously and want to know if this is the result of abuse or alienating behavior. Resistance to spending time with a parent is always a serious problem. This needs to be investigated, fully understood, and treated with counseling in many cases. Otherwise, the child’s future relationships may be much more difficult.

IS THIS THE RESULT OF ABUSE? The first concern of the courts is protecting the children. If there are reports of child abuse as the cause of the child’s alienated behavior, the judge may make a protective order restraining contact with the “rejected” parent, such as a temporary order for supervised visitation. If you are the “rejected” parent you may feel that supervised visitation is unnecessary or insulting. Yet this may be your biggest help, as someone neutral can observe the child’s behavior and your relationship. Often the judge will say that he or she will not make any assumptions and wants more information before understanding the cause.

IS THIS THE RESULT OF “PARENTAL ALIENATION SYNDROME?” It is important to know that the courts across the country have not adopted the idea that there is such a syndrome. A syndrome requires a generally accepted cause and effect, and there are many possible causes of children’s alienated behavior (abuse by a parent, alienating behavior by a parent, lack of emotional boundaries by a “rejected” parent, lack of emotional boundaries by a “favored” parent, developmental stage, outside influences, etc.). Also, despite alienating behavior by some parents, many children are not resistant to spending time with the other parent. So it is not accepted as a syndrome. However, the courts generally recognize that some children are alienated – they just don’t know the reason automatically and often want more information.

WHAT ARE THE SIGNS OF AN ALIENATED CHILD? Children who are not abused, but are alienated have emotionally intense feelings but vague or minor reasons for them. A child might say: “I won’t go to see my father!” Yet she might struggle to find a reason: “He doesn’t help me with my homework.” Or: “He dresses sloppy.” Or: “He just makes me angry all the time.” Another child might say: “I hate my mother!” Yet again the reasons are vague or superficial: “She’s too controlling.” “She doesn’t understand me like my dad.” These children complain that they are afraid of the other parent, yet their behavior shows just the opposite – they feel confident in blaming or rejecting that parent without any fear or remorse. Some of them speak negatively of the “rejected” parent to others, then relax when they are with the “rejected” parent. Others run away, rather than spend time with the rejected parent. All of these behaviors are generally different from those of truly abused children, who are often extra careful not to offend an abusive parent, are often hesitant to disclose abuse and often recant even though it’s true.

WHY DO ALIENATED CHILDREN FEEL SO STRONGLY? Alienated children generally show intensely negative emotions and an absence of ambivalence. New research on the brain suggests that this may be the result of the unconscious and nonverbal transfer of negative emotions from parent to child. The parent’s intense angry outbursts (even if they are rare), intense sadness, and intensely negative statements about the other parent may be absorbed unconsciously by the child’s brain, without the child even realizing it. The child then develops intensely negative emotions toward the other parent (or anyone the upset parent dislikes), but doesn’t consciously know why. This may explain the vague or minor reasons given by alienated children for intensely rejecting a good parent. This spilling over of negative emotions from upset parent to child may have begun years before the divorce, so that the child is very tuned in to the upset parent, and automatically and instantly absorbs their emotions and point of view.

DOES CUSTODY MAKE A DIFFERENCE? If one parent has almost all of the parenting time, then the child will not have his or her own experiences with the other parent to know that he or she is not bad. Most states expect children to have substantial time with both parents – except in cases of abuse. Ironically, the amount of time is generally not the biggest factor. The biggest factor is if one parent is constantly spilling over intensely negative emotions to the child about the other parent, while the other parent is following court orders and not addressing these issues at all. For this reason, children can become alienated against either a non-custodial parent or a custodial parent. This can be either the father or the mother. It’s like a bad political campaign, with one side campaigning hard and the other side not campaigning at all.

HOW CAN YOU PREVENT ALIENATION? You might be alienating your child against the other parent or against yourself, without even being conscious of it - especially during a divorce. Here are seven suggestions:

1. **POSITIVE COMMENTS:** Regularly point out positive qualities of the other parent to your child.
2. **REPAIRING COMMENTS:** All parents make negative comments about the other parent at times. If you realize you made such a comment, follow up with a "repairing comment": "I just spoke negatively about your father [or mother]. I don't really mean to be so negative. He has many positive qualities and I really value your relationship with him. I'm just upset and my feelings are my responsibility, not his and not yours."
3. **AVOID REINFORCING NEGATIVE COMMENTS:** Healthy children say all kinds of things, positive and negative, about their parents – even about abusive parents. If there is abuse, have it investigated by professionals. If not, be careful that you are not paying undue attention to their negative comments and ignoring their positive comments.
4. **TEACH PROBLEM-SOLVING STRATEGIES:** If your child complains about the other parent's behavior, unless it is abusive, suggest strategies for coping: "Honey, tell your father something nice before you ask for something difficult." "Show your mother the project you did again, she might have been busy the first time." "If he/she is upset, maybe you can just go to your room and try not to listen and draw a picture instead."
5. **AVOID EXCESSIVE INTIMACY:** Children naturally become more independent and self-aware as they grow up. Be careful not to be excessively intimate with your child for the child's age, as this may create an unhealthy dependency on you. Examples include having the child regularly sleep with you in your bed beyond infancy; sharing adult information and decisions (such as about the divorce); and excessive sadness at exchanges or how you miss the child when he or she is at the other parent's house.
6. **AVOID EXCESSIVE COMPARISONS:** When you emphasize a skill or characteristic that you have, don't place it in comparison to weaknesses of the other parent. You each have different skills and qualities that are important to your child. By comparing yourself positively and the other parent negatively (even if this feels innocent), you can inadvertently influence your child. Remember that your child is a combination of both of you, and thinking negatively of one parent means the child may think negatively about half of himself or herself.
7. **GET SUPPORT OR COUNSELING FOR YOURSELF:** It is impossible to go through a divorce without getting upset some of the time. Protect your child from as much as possible by sharing your upset feelings with adult friends and family, away from your child. Get counseling to cope with the stress you are under.

WILL THE COURT ADDRESS THIS ISSUE? Routinely, in a divorce or separation, the court will order that neither parent shall make disparaging remarks about the other parent within hearing of the child. Some courts may ask you for 3 positive comments about the other parent or 3 steps you are taking to protect the child from absorbing your negative emotions toward the other parent. Think about this seriously, so that you are prepared to answer this question if it is raised. Most of all, practice the suggestions described above.

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Scholarships Available to Regional Training in Reno, Nevada

AFCC is offering four scholarships to the Regional Training Conference, *Interventions for Family Conflict: Stacking the Odds in Favor of Children*, at the Peppermill Resort Spa Casino in Reno, Nevada, November 5-7, 2009. The four conference scholarships include registration fees for one full-day pre-conference institute, general conference registration, and a three night stay in a standard room at the Peppermill. Additional expenses, such as travel and meals, are the responsibility of the recipient. Applications must be submitted by September 15, 2009. For more information, go to http://www.afccnet.org/conferences/afcc_conferences.asp.