

# **New York Law Journal**

## **Parent Education in Contested Custody Cases (Essential in the Season of Coronavirus)**

**The current pandemic has increased the tensions that normally affect families, and particularly those engaged in divorce proceedings.**

**By: Sondra M. Miller | June 03, 2020**

Matrimonial and custody determinations have long been noted for their detrimental effect on the litigants, their children, their counsel ... and even the judiciary. In the wake of the current pandemic, the trauma is exacerbated. Magnified social and psychological tensions affect all—and inflict damage, often permanent, particularly on the children subject to the conflict. Ellen C. Schell, “How the Public Health Crisis Makes Preventing Domestic Violence Harder,” NYSBA.org, May 1, 2020.

Supreme Court Justice Jeffery Sunshine’s excellent article published in the New York Law Journal on March 27, 2020, titled “COVID-19 and Future Custody Determinations,” is a “must read” for matrimonial practitioners representing clients in custody and visitation disputes. Judge Sunshine, Statewide Coordinating Judge for Matrimonial Cases, notes that the courts will consider the behavior of the parent during the litigation as relevant to their future conduct that will affect their children. He notes that a party’s failure to obey court orders may be relevant to the court’s conclusion as to the likely behavior of the party after conclusion of the court’s proceedings. Judge Sunshine reminds us that custody

and parenting decisions are one of the most difficult the Court is required to make. He advises parents that:

[h]ow they conduct themselves at parenting during a time of a pandemic crisis ... will shape their relationship with each other as divorced parents in the future ... . Through the eyes of a child, their world turned upside down—their school disrupted and social interactions with friends now almost impossible. One of the only things that should and can bring comfort to a child is parents cooperating. Not only is it in the best interest of the child—the time-honored standard—it is the best interest in their divorce and their relationship to come.

All of the above reinforces the importance of parent education programs during this unprecedented time. The history of these programs, as described below, provides further reinforcement. From the inception of the original PEACE (Parent Education and Awareness) Program in 2005 (22 NYCRR §144 et seq.) until funding for the program was ended in 2011, I volunteered to administer the PEACE program for the Ninth Judicial District Supreme and Family Courts. My esteemed colleague, Hon. Edward P. Borrelli, now of counsel at McCarthy Fingar, was another PEACE pioneer. He affords us his clear recollection of the original program and its value:

*For many of the years during which I served as a full time trial JHO and trial Referee in the 9th JD Matrimonial Part, I also volunteered to administer the PEACE program for the 9th Judicial District Supreme and Family Courts. The PEACE Program's goal, most succinctly stated, is to minimize and mitigate the impacts of ongoing, pending divorce or custody proceedings on the children. Basic civility between the parents, particularly in the children's presence, was my primary message.*

*The PEACE program was implemented through evenings of parental education programs taught in the courthouse by judges, attorneys, mental health professionals and others involved and experienced in the divorce and/or custody disposition process. The PEACE program was specifically designed so that the two parents would not be attending the same session. This enabled the attending parents to speak up in an unstifled manner, which far outweighed the burden of offering double the number of sessions.*

*There were segments on the law of equitable distribution, custody, visitation (parenting time), child support and other issues, led by the participating judges and attorneys. There were also discussions on the psychological issues involving the children led by mental health professionals. The program was replete with helpful and practical hints on how to avoid, even unintentionally in many cases, adversely impacting children during the litigation process.*

*Preventing attempts to prejudice and/or alienate the child against the other parent was a paramount goal, as was preventing weaponization of the child by withholding visitation, withholding invitations to, or knowledge of, the child's school or extra-curricular activities, withholding child support payments, and using the children as messengers for those payments. The child becomes the ultimate, unintended victim of such misconduct.*

*Joint-custody, based upon specified and agreed terms and conditions, and dependable, structured parental access, when warranted, was encouraged. The possibility of supervised visitation or supervised transfers of the child, when necessary, would also be addressed. It was often stated that visitation is not as much the right of a parent to*

*have contact with his/her child as it is the right of the child to have the love of and contact with both his/her parents.*

*Sensitization regarding the diverse burdens and distinctions between the residential custody parent and the non-residential parent were also discussed.*

*It is my firm belief that attendance benefitted many of the attendees directly, and therefore benefitted their children indirectly, both short term and long term. Often the attendees had reluctantly or unwillingly attended solely to comply with the Court's mandate. Some even arrived in a manner akin to a criminal defendant complying with a sentencing condition. Particularly gratifying were the many expressions of gratitude from such parents, who freely admitted that the program did enlighten and assist them in structuring their future behavior in a manner more sensitive to its effects on their children.*

When I retired from the Appellate Division, Second Department in 2005, and returned to private practice as chief counsel at McCarthy Fingar and to matrimonial practice (litigation, mediation, and collaborative law), I once again witnessed the pain and trauma experienced by the parties, and particularly the children, enmeshed in matrimonial and custody litigation. I regretted that funding for the PEACE program had been terminated, and I decided to do something about it. I gathered a group of judicial colleagues, attorneys, academics, mental health professionals and special friends to meet and discuss the possible revival of Parent Education in New York State.

Fittingly, on Feb. 14, 2017, JROPE (Judicial Restoration of Parent Education) was born. Our committee met at the Manhattan office of JROPE co-founder Hon. Jacqueline Silbermann for over two years. The initial committee included, among others, Prof. Andrew Shepherd of the Maurice A. Deane School of Law, Hofstra

University; Harriett Weinberger, Counsel for Attorneys for Children, Office of Court Administration; Daniel Weitz, Office of Court Administration; Dolores Gebhardt, McCarthy Fingar; Lesley Friedland, FamilyKind; and Hon. Rachel Adams, Supreme Court, Kings County. We studied and researched the history and performance of parent education programs throughout the United States and abroad. We met several times during the ensuing two years. With the invaluable input of Professor Shepherd and his Hofstra Law School interns, we debated at length and finally agreed that we would present and suggest a proposal to Chief Judge Janet DiFiore, urging the reestablishment of the PEACE program throughout New York state, with one critical revision to the existing rule: referral of litigants to parent education in contested custody proceedings would be mandatory.

In 2018, a small group from JROPE presented our proposal to Chief Judge DiFiore, who greeted it with enthusiasm and agreed to present it to the Office of Court Administration. Thereafter, it was submitted to the public for comment (mostly favorable). In June 2018, OCA promulgated a rule creating a pilot program in seven counties: Monroe, Ontario, Nassau, New York, Tompkins, Washington and Westchester. In these seven counties, attendance at parent education is mandatory in matrimonial cases where custody is unresolved. Daniel Weitz of OCA has reported that the results from the pilot program have been largely positive. Even more gratifying is the fact that several Family Court judges are referring all litigants in custody cases to parent education even though the pilot program does not currently include the Family Court.

JROPE will continue to encourage further expansion of mandatory parent education beyond the seven counties in the pilot program, and to include the Family Court. My JROPE colleagues and I have presented details of the pilot program at the 2019 Summer Judicial Seminars and at the Westchester County Courthouse. Our inaugural committee has been significantly enlarged with the

addition of several judges (among them, Ninth Judicial District Administrative Judge Hon. Kathie Davidson, Hon. Richard Dollinger, Hon. Matthew Cooper, Hon. Jeffrey Goodstein, Hon. Rachel Hahn, and Hon. Arlene Katz) and prominent matrimonial attorneys Sam Ferrara and Michael Ratner, who have had enormous success with Nassau County's Parent Education program.

The current pandemic has increased the tensions that normally affect families, and particularly those engaged in divorce proceedings. The laws of the state of New York have long recognized the need for divorce—that “to err is human”—and that people are not doomed to be trapped in failed marriages. The intended result is that the parties are free to pursue a different path ... perhaps another marriage, a different career, job or business—some poorer, some richer, but hopefully somewhat wiser as a result of their failed experience.

Unfortunately, not so their children, who may become enmeshed in the marital conflict and may suffer irrevocable damage. Psychodynamic experience has established that the damage inflicted on children in their formative years shapes their behavior and emotions for the rest of their lives. I know that no vaccine will protect vulnerable children trapped in their parents' marital conflicts.

To avoid such consequences under normal circumstances, psychotherapy, marriage counseling, meditation, etc. would be considered critical and appropriate. However, the present constrictions of the pandemic result in their unavailability. Even the “*in personam*” parent education classes described above that were so helpful in the past are not presently available.

I close with the good news that there are two online Parent Education programs available. I urge counsel, mental health

professionals, and particularly judges, to refer parents to them at this time:

This is the link to the FamilyKind class:

<https://www.nyparentingclass.com/>.

This is the link to the Online Parenting Programs class:

<https://newyork.onlineparentingprograms.com/>.

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