

IT IS JUST GOOD BUSINESS

THE CASE FOR SUPPORTING
REFORM IN DIVORCE COURT



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This article examines the ways in which divorce and child custody proceedings can impact employee productivity and suggests that it behooves businesses to become involved in supporting efforts to improve the process—both as a matter of community service and because it can impact their bottom line. This article further outlines some improvements that are being implemented or considered in various jurisdictions.

Key Points for the Family Court Community:

- Divorce does not just impact the parties and their children. It also impacts the work productivity of the individuals involved.
- The population of individuals seeking court involvement in child custody issues has changed, and new processes must be developed to address their needs.
- There are new ideas about how to restructure the divorce process in ways that could benefit both the individuals and their employers.

Keywords: *Dissolution; Divorce; Employee Assistance Programs; and Family Resource Centers.*

Business leaders are increasingly considering the ways in which personal and environmental factors impact the health and productivity of their employees. Health and productivity analysis has changed everything from disability management to ergonomics. The take-away is that, when businesses invest strategically in these factors, there is a real and measurable return in employee performance.

A clear personal and environmental factor that can have a very negative impact on employees is family discord. Over time, many businesses have developed employee assistance programs (EAPs) and some limited prepaid legal services to help employees struggling with divorce or child custody matters. But that approach alone is not enough. This article proposes that businesses have a stake in helping to reexamine the way in which our society unwinds marriages and addresses child custody issues. If those processes can be improved—such that they cost less money, take less time, and are less adversarial and inflamed—not only will employees benefit, but so will their employers. Not only is it good practice, it is just good business.

We know intuitively that family and work are not mutually exclusive spheres of life but are in fact interrelated parts of the same whole. For example, an employee in the throes of a domestic relations matter is not the ideal employee—distracted, angry, depressed, and absent from work more often. When the legal process drags on—perhaps for years—the employee is drained financially and emotionally and is simply less productive.

Telling employees not to get married or not to get divorced is not an option. Employees will marry and have children and—in some instances—those relationships will dissolve. According to the National Center for Health Statistics, the 2009 rate of divorce in the United States is 3.4 per thousand people.² It is one of the highest rates in the industrialized world.³

As it stands, family courts tend to aggravate adversarial tension as opposed to fostering cooperative solutions. A commitment to employee health and productivity should mean a commitment to supporting alternative processes for addressing family conflict. Now is the time to evaluate new approaches and implement reforms both in the court process itself and outside of court. Families need

alternative, nonadversarial ways to resolve their conflicts. There are hopeful models around the country and the world. The Institute for the Advancement of the American Legal System at the University of Denver supports and is leading the way in customizing, importing, and evaluating the best practices from those models. But this is one effort in which we all have a stake, because family disputes have an impact beyond the individuals most immediately involved.

THE TIE BETWEEN FAMILY AND WORK

Family and work are not separate domains but “closely interconnected facets of human life.”⁴

Separating family and work is not only unnatural, but unhealthy, and smart business leaders discover very quickly that employees’ problems at home affect absenteeism, productivity, and safety in the workplace.⁵

Work stress can spill over into family life but the stress can also go in the other direction: negative experiences in the family spill over into work.⁶ There is also a circular effect: individuals bring the stress of work home, aggravating family stress, which, in turn, triggers more stress at work.⁷

Divorce and marital strife can negatively impact workplace productivity, either by increased absences or decreased output while the employee is at work. A 1996 study found that, as marital distress increased, work-loss days increased at a rate of 1.34 work loss days.⁸ This was true for men married ten years or less.⁹ These results are consistent with studies from other countries.¹⁰ A Canadian study found that divorce was related to a drop in labor force participation of seven percentage points for men.¹¹ Other European studies have shown that divorce or domestic strife strongly predicts increased absences from work due to health issues.¹²

Marital strife also can impact an employee’s attitude about work. There is a proven correlation between family stress and job burnout or job satisfaction.¹³ In considering the influence of marriage on job satisfaction, marital quality plays a significant role.¹⁴ Although a good family relationship can support positive job satisfaction and productivity, negative family support is more closely related to job burnout.¹⁵

Marital conflict tends to be one of the most prevalent problems identified in EAPs (twenty-five percent); approximately thirty-five percent of all EAP cases began as or developed into marital or family therapy.¹⁶ One third of the clients in a federal EAP program cited marriage, relationships, and family issues as the presenting problem.¹⁷ Marital discord may be even more prevalent. In a Warren Sheppell research report, an employee assistance consultant suggested that as much as seventy-five percent of counseling could be related to marital problems even if it is not the presenting problem, because workplace stress can mask marital discord.¹⁸ A 2004 study on EAP supports this assertion: family and individual psychological problems often coexist; nearly two thirds of employees in family therapy available through their EAP reported serious family problems in their lives and a need for services.¹⁹

Family conflict also has been linked to individual problems—mental health, domestic violence, impaired immune function, addiction—that have known links to diminished job performance and absenteeism.²⁰ Emotional and personal problems are associated with increased absences, tardiness, on-the-job injuries, property damage, medical claims, and employee turnover.²¹ It is also a significant safety concern when personal problems have been implicated in eighty to ninety percent of industrial accidents.²²

Finally, domestic violence has significant impacts on work. Different studies have shown that between thirty-five and seventy-four percent of battered women report being harassed at work by their partner.²³ Almost half of domestic violence victims miss at least three days of work every month and seventy percent report “having difficulty” performing their jobs.²⁴ Victims miss work to recover from or seek care for injuries, attend counseling sessions, find new housing, develop safety plans, obtain legal advice, and be present for court proceedings.²⁵ Sixty percent of victims have been reprimanded at work for abuse-related problems such as tardiness or interference with work.²⁶ In addition to the

effects on victims, coworkers are less productive due to stress and distraction, and perpetrators also tend to miss work and are distracted at work.²⁷ Various studies have estimated the annual organizational cost of domestic violence could reach as high as five billion dollars nationwide and the value of annual lost productivity could be as much as \$727.8 million.²⁸

Human resources professionals have personally observed how family disputes negatively impact work. An article in *HR Magazine* noted that employees going through a divorce make more mistakes; work more slowly; and if they are feeling angry, project that anger onto colleagues and customers.²⁹ These employees are focused on legal, financial, housing, and child care certainty and control and are coping with financial pressures including legal costs and a drop in standard of living.³⁰ The costs of divorce are significant for individuals. The estimated costs of divorce in one state (Utah) have been calculated at \$414 million per year (\$448 million in 2010), which includes \$300 million (\$324.6 million in 2010) in direct and indirect costs to both the state and federal government.³¹ The costs of divorce nationally are estimated at \$33.3 billion annually (\$36 billion in 2010).³² These issues inevitably distract employees from their work.

It is clear that family strife, whether it is marital discord, divorce, domestic violence, or a custody dispute, creates ripples well beyond the immediate individuals involved.

REDUCING FAMILY CONFLICT, IMPROVING PRODUCTIVITY

Given the link between family and work, employers have recognized already that efforts to assist employees in the throes of personal problems benefit the business bottom line:

[B]usiness success today requires more than just the effective management of physical capital (such as machines, inventory, and property); it also demands the effective management of human capital.³³

A company's success depends on the effectiveness of its employees. Today, employers that are committed to helping their employees become productive and successful at work should also help them reach that same success in their family life. Many employers have already taken proactive steps to reduce employee stress generally, including stress from marital discord and family disputes, and for that investment, employers can expect a positive effect on job performance and productivity.³⁴

Employers find EAPs valuable because they serve the purpose of investing in human capital, recognizing that it is less expensive to address a good employee's personal problems than to find and train another employee.³⁵ In the modern workplace, EAPs serve a variety of functions but all with the purpose of maximizing the employer's investment in its employees. Services provided include education, counseling, referrals, support for supervisors, and strategic consulting for organizational change, as well as preventive and reactive services for critical incidents. Today, an EAP is often integrated into work/life, health, or wellness services offered by an employer.

The 2010 Benefit Summary published by the Society for Human Resource Management (SHRM) indicates that seventy-five percent of responding members³⁶ included EAPs in their organization's benefits offerings.³⁷ A Family and Work Institute study found that, as of 2008, over sixty-five percent of responding employers provided some form of EAP within their organization.³⁸ The Bureau of Labor Statistics reports that, from 1998 to 2008, full-time public-sector workers increased access to EAPs from seventy to seventy-six percent and full-time private-sector workers increased access to EAPs from thirty-six to forty-six percent.³⁹

Although most measurements of EAP effectiveness may be limited by poor information and difficulty in setting a baseline, studies show high levels of improvement in attendance and productivity.⁴⁰ The greatest area of financial savings is improved employee productivity and reduced absences, but other studies have shown savings in medical, disability, and workers' compensation claims as well.⁴¹ The typical return on investment is at least three dollars for every dollar invested.⁴²

A 1995 study focused on the effectiveness of one EAP program for sixty-one individuals, couples, or families who sought assistance because at least one spouse was considering divorce.⁴³ In ten cases,

extramarital affairs had occurred; in thirty cases, one spouse was chemically dependent; and in seventeen cases, the husband was physically violent.⁴⁴ Approximately twelve to eighteen months after the initial services, forty-one of the sixty-one couples using the EAP services had decided to stay married and work to improve their marriage and family relationships and four more had decided to stay married during marital counseling.⁴⁵ Seventy-four percent of the sixty-one couples remained together after one year.⁴⁶ Every couple located for the study, whether they separated, divorced, or reconciled, recommended EAP services for marital or other issues.⁴⁷

Federal Occupational Health, which provides EAP services for federal and military workforces, also conducted an outcomes study of nearly 60,000 clients over a three-year period between 1999 and 2002.⁴⁸ The study collected assessments before and after the intervention.⁴⁹ Overall, the time away from work fell by almost two thirds.⁵⁰ Across all clients, the study showed an average 1.46 pre-/post-EAP reduction in workdays with unscheduled absences or tardiness.⁵¹ In particular, clients seeking assistance for marriage or relationship issues showed marked improvement in productivity associated with mental health (sixty-six percent), attendance (eighty-three percent), and general functioning (seventy-three percent).⁵²

EAPs are not the only form of employer-sponsored intervention that has seen positive results. Experimental relationship enhancement programs have demonstrated increased worker productivity, fewer accidents, and lower use of health care services.⁵³ An intervention program like this that improves the worst twenty percent of marriages to the median level of marital distress would save 61.9 million work-loss days per year for men married ten years or less.⁵⁴ In addition, a couples coping enhancement training at a nationwide telecom company in Switzerland also showed an increase in dyadic coping and communication skills that employees applied not only in their personal lives but also at work.⁵⁵

Despite these positive outcomes, employer-provided services for dealing with family disputes are limited both in availability and in scope. While access to EAPs in large corporations is common,⁵⁶ that is not the case with small employers.⁵⁷ In a Family Work Institute study, eighty-seven percent of employers with 1000 or more employees offered EAPs, but only fifty-one percent of employers with fifty to ninety-nine employees did.⁵⁸ Further, employee assistance is limited in what it can accomplish. EAPs have been criticized as “slow to recognize” the benefits of marital counseling as well as the impacts of the legal system on personal and work stress.⁵⁹ Many EAPs do not provide services for family members or couples counseling.⁶⁰ Moreover, when family disputes arise, EAPs do not provide—nor are they equipped for—dispute resolution services, legal representation, or assistance in navigating the legal system. For example, prepaid legal services plans typically cover only uncontested divorces and exclude coverage for custody battles:⁶¹ a classic example of plugging only the hole through which the *least* amount of leakage is occurring.

Consequently, the business approach thus far has been to attempt to mitigate the radiating consequences of family strife. That is important and must continue, but there is more that needs to be done. What really needs to occur is a systemic reexamination of the underlying system for divorce and child custody determination: the system that can and frequently does cause delay, excessive cost, and polarity. What Judge Michael Dann of the State of Hawaii has captioned “juragenic harm”—the harm *caused* by the legal system itself—must be mitigated. And there is hope on the horizon.

RAZING AND REDESIGNING OUR APPROACH TO FAMILIES

About 5.7 million domestic relations cases, which include cases comprising all of the financial and custodial disputes between spouses and married or never-married parents, were filed in state courts nationwide in 2009—an increase of eight percent from 1999.⁶² Some of the most dramatic increases relate to custody and child support matters. Between 1999 and 2008, custody filings increased by twenty percent and support filings increased by twenty-six percent nationwide.⁶³ The increasing numbers of self-represented litigants also puts added pressure on the courts. In Indiana, for example, fifty-five percent of the litigants in family court in 2008 were self-represented.⁶⁴

The objective of a divorce or child custody proceeding should be to separate two parties' lives with as little negative impact as possible on their children, finances, and ability to communicate with one another, but the legal system is ill suited to identifying or achieving that outcome.⁶⁵ Each litigant brings the emotional upheaval of the family conflict to court.⁶⁶ The adversarial model traditionally used in civil or criminal litigation only aggravates this conflict, and consequently, courts have difficulty fostering a quick, inexpensive, and final resolution. The adversarial system is premised upon each side of a case arguing a position and pointing out the discrepancies in their opponent's position. The judge then makes a decision about who wins the immediate legal issue by deciding the facts of the dispute and applying the law. That model falls apart when the dispute is more about ongoing relationships and far less about fact finding and application of the law.⁶⁷ Not only is the system ill suited to the resolution of family disputes, but the mismatch has harmful effects on children. Slightly more than half of all divorces involve children under the age of eighteen, and more than forty percent of all children will experience parental divorce before reaching the age of majority.⁶⁸ Persistent conflict between parents during the legal process and following a separation or divorce can be a major source of stress for children.⁶⁹ As the length of time parents are in conflict increases, so does the risk of behavioral and psychological difficulties for their children.⁷⁰

These realities are not immutable. There are alternatives, and they only require application and evaluation. "The American way of divorce and proceedings dealing with never-married parent custody and financial disputes needs to be razed and redesigned."⁷¹ And, over the last two decades, courts have been attempting to reinvent the way family disputes are resolved.⁷²

Shifting societal values and family expectations have quietly revolutionized the divorce process—particularly when children are involved. Unhappiness with the traditional system, changing parental roles, social science research on children and divorce, and adoption of new expectations have altered social policy.⁷³

Given research that shows that higher levels of parental conflict have negative effects on children, some family courts have moved away from the adversary process and adopted an integrated approach that requires courts to understand the broader family dynamics and to treat family disputes as ongoing social and emotional processes, not discrete legal events.⁷⁴ Many courts "aim to make the system more efficient and responsive to the needs of the parties."⁷⁵ Consequently, court reforms aim to empower families to resolve their own conflicts through tools like flexible parenting plans that minimize the need for future court intervention.⁷⁶

Reform efforts are wide ranging. Some states have adopted specialty family courts with comprehensive subject matter jurisdiction over cases involving family law issues.⁷⁷ Courts use case management practices that encourage early and active court involvement and may assign one judge or a single case management team to oversee the case. Some courts also use differentiated case management to tailor court services and interventions, such as dispute resolution, evaluations, and education, to the needs of each family.⁷⁸ Courts provide services to address the nonlegal needs of parties and strive to be accessible and user friendly.⁷⁹

Other courts have adopted mandatory mediation or other alternative dispute programs. In mediation, an impartial third-party mediator facilitates the resolution of family disputes through a voluntary agreement.⁸⁰ In Early Neutral Evaluation, the parties receive a nonbinding evaluation by an expert or team of family law experts and then have an opportunity to negotiate a settlement.⁸¹ Courts also have created new roles within the legal system, such as parenting coordinators, who are delegated by a judge to assist in high-conflict family cases to prepare and implement a parenting plan and manage recurring disputes about day-to-day issues.⁸²

All of these reforms are in place somewhere, but there has been no systematic effort to evaluate them and institutionalize the successful ones. Rather, the wheel is invented and reinvented regularly. And, the wheel is beginning to come off the wagon in jurisdictions where budget cuts are impacting the capacity of the court to offer innovative programs or even to offer timely access to judicial officers.

Furthermore, reforms within the court system only work for families that have already filed for divorce or some other court order. Once the parties file, the risk is that their positions begin to calcify and they increasingly view one another as adversaries. Accordingly, there is one model that attempts to provide information to families before they even file any action in the court, a model that is in place in Australia and British Columbia.

In conjunction with a broader effort to reform its entire family law system, Australia has established sixty-five Family Relationship Centres, operated by not-for-profit, community-based organizations. The Centres initially try to prevent family separation by strengthening family relationships and dealing with relationship difficulties through information, advice, and dispute resolution services.⁸³ If that fails, for families that do decide to pursue legal action, the program encourages agreement on issues before any case is filed.⁸⁴ Dispute resolution sessions are mandated before filing any application for a parenting order or child maintenance order and are free of charge for up to three hours.⁸⁵ The Centres promote the right of children to have meaningful relationships with both parents.⁸⁶ The Centres provide information, referrals, and family relationship seminars without charge.⁸⁷

Services such as those in Australia and British Columbia are only sporadically available in the United States. As a means of avoiding the courts, some families are using a collaborative law model where both parties agree at the outset to resolve their issues without going to court.⁸⁸ In this model, both parties retain lawyers who specialize in negotiation and problem solving. If the parties are not able to reach an agreement, they are required to retain new lawyers.⁸⁹ The collaborative lawyers are disqualified from participating in the court action.⁹⁰ Consequently, the process can be cost-duplicative and difficult for families with modest incomes.

Overall, however, these innovative approaches demonstrate a real desire to change the way we resolve family disputes both within the legal system and outside of it. In addition to minimizing the adversarial nature of traditional litigation, the in-court process must be speedy, simple, inexpensive, and fair. Outside of court, a model could offer a one-stop resource center where families of all income levels can access various advisors, attorneys, tax specialists, financial planners, mediators, and mental health experts—who specialize in children and families.⁹¹ Families contemplating divorce need help figuring out how to divide their lives, their finances, and their parenting responsibilities. If they have that help, they may be able to arrive at a fully agreed-upon plan that would avoid the need for them to go to court at all.

THE BUSINESS STAKE IN FAMILIES

In short, adversarial family dispute resolution models negatively impact both individuals and their employers. There are possible solutions: innovative approaches to out-of-court resource models and new in-court processes. What is lacking is simply a commitment to implementing and evaluating those models to determine which ones best serve families and then a widespread adoption of those changes. Our societal failure to address family disputes adequately has a much wider impact than the immediate individuals involved. Employers already recognize the negative effects of family disputes on the workplace in terms of lost productivity. As part of their investment in human capital, businesses must recognize a stake in the efforts to find a better approach to family separation. It makes good people sense and good financial sense.

This is the next part of a broader call for civil justice reform. The American business community has already recognized the need for change in civil cases where businesses are litigants.⁹² Process reform in family cases is a piece of that puzzle, with every bit as immediate and important consequences to businesses. Whether businesses are paying the bill through excessive litigation costs in a case in which they are parties or paying the bill in loss of employee time and productivity in cases in which the employees are embroiled, the net result is negative. Business has a very real stake in the development of a new model for family disputes.

NOTES

1. I thank Natalie Knowlton and Bailey Mahoney, both of whom were invaluable in providing research and editing assistance with this article.
2. Nat'l Ctr. for Health Statistics, *Births, Marriages, Divorces, and Deaths: Provisions Data for November 2009*, 58 NAT'L VITAL STAT. REP. 1 (2010), http://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58_23.pdf.
3. Betsey Stevenson & Justin Wolfers, *Marriage and Divorce: Changes and Their Driving Forces*, 21 J. ECON. PERSP. 27, 27–52 (2007).
4. Marcel Schaefer et al., *Balancing Work and Relationship: Couples Coping Enhancement Training (CCET) in the Workplace*, 57 APPLIED PSYCHOL. 71, 72 (2008).
5. Howard J. Markman et al., *Marriage Education in the Workplace*, 3d Q. J. EMP. ASSISTANCE 12, 14 (2006).
6. Schaefer et al., *supra* note 4.
7. Leslie B. Hammer et al., *Work-Family Conflict and Work-Related Withdrawal Behaviors*, 17 J. BUS. & PSYCHOL. 419, 420 (2003); Patricia Voydanoff, *Work Demands and Work-to-Family and Family-to-Work Conflict: Direct and Indirect Relationships*, 26 J. FAM. ISSUES 707, 709 (2005).
8. Melinda S. Forthofer et al., *Associations Between Marital Distress and Work Loss in a National Sample*, 58 J. MARRIAGE & FAM. 597, 601 (1996) (the study used five measures of marital distress—marital satisfaction, marital rating, spouse bad behavior, positive interaction, negative interaction, and marriage quality—and all except marital rating had a positive and statistically significant correlation with work loss).
9. *Id.*
10. Not all of the foreign studies on this subject are directly comparable to the United States; however, they are representative of family strife's pervasive impact on the workplace.
11. Richard E. Mueller, *The Effect of Marital Dissolution on the Labour Supply of Males and Females: Evidence From Canada*, 34 J. SOCIO-ECON. 787, 797 (2005).
12. *Impact of Divorce on Absenteeism Levels*, TNO WORK & EMP'T (July 8, 2008), <http://www.eurofound.europa.eu/ewco/2008/02/NL08020691.htm>; See generally Sakari Suominen et al., *Job Strain, Life Events, and Sickness Absence: A Longitudinal Cohort Study in a Random Population Sample*, 49 J. OCCUPATIONAL & ENVTL. MED. 990 (2007).
13. See generally Maria C. W. Peeters et al., *Balancing Work and Home: How Job and Home Demands are Related to Burnout*, 12 INT'L J. STRESS MGMT. 43 (2005).
14. Stacy J. Rogers & Dee C. May, *Spillover Between Marital Quality and Job Satisfaction: Long-Term Patterns and Gender Differences*, 65 J. MARRIAGE & FAM. 482, 484 (2003).
15. See generally Caren Baruch-Feldman et al., *Sources of Social Support and Burnout, Job Satisfaction, and Productivity*, 7 J. OCCUPATIONAL HEALTH PSYCHOL. 84 (2002).
16. Sterling T. Shumway et al., *A Place for Marriage and Family Services in Employee Assistance Programs (EAPs): A Survey of EAP Client Problems and Needs*, 30 J. MARITAL & FAM. THERAPY 71, 72 (2004).
17. Rick Selvik et al., *EAP Impact on Work, Relationship, and Health Outcomes*, 2 Q. J. EMP. ASSISTANCE 18, 19 (2004).
18. WARREN SHEPEL, BE MY STRESSED OUT VALENTINE: WORKPLACE STRESS AND ITS EFFECTS ON RELATIONSHIPS: INSIGHTS FROM THE WARREN SHEPELL RESEARCH GROUP 4 (2005).
19. Shumway et al., *supra* note 16, at 76.
20. Forthofer et al., *supra* note 8, at 598; Janet Weinstein & Ricardo Weinstein, "I Know Better Than That": *The Role of Emotions and the Brain in Family Law Disputes*, 7 J. L. & FAM. STUD. 351, 373–374 (2005).
21. Shumway et al., *supra* note 16, at 72.
22. *Id.*
23. Jessie Bode Brown, *The Costs of Domestic Violence in the Employment Arena: A Call for Legal Reform and Community-Based Education Initiatives*, 16 VA. J. SOC. POL'Y & L. 1, 1–57 (2008).
24. *Id.* at 23.
25. Meg Hobday, *Domestic Violence Comes to Work: The Need for a Work-Related Response*, 67 MINN. BENCH & B. 20, 20–24 (2010), available at <http://mnbenchbar.com/2010/03/domestic-violence-comes-to-work/>.
26. Brown, *supra* note 23, at 23.
27. Hobday, *supra* note 25.
28. *Id.*
29. Linda W. Andrews, *Coping with Divorce*, HR MAG., May 1, 2005, at 58.
30. *Id.*
31. David Schramm, *Individual and Social Costs of Divorce in Utah*, 27 J. FAM. ECON. ISSUES 133, 133–51 (2006) (direct costs include personal costs to divorcing families such as legal fees and filing fees, divorce education classes, housing, and lost productivity); see also Forthofer et al., *supra* note 8, at 604 (the lost productivity costs are derived from the 1996 study that measures lost productivity due to marital problems generally, not just divorce). Schramm noted other direct personal costs that are more difficult to quantify, such as economic well-being, failure to pay child support, occupational and/or educational training, child care, commuting costs, marriage counseling, and partial loss of retirement benefits. Schramm also considered the direct costs to the community, including costs to food banks, charities, and religious organizations, as well as an increase in debt and likelihood of bankruptcy. Schramm considered direct costs of divorce to the state, including costs associated with the

department of workforce services, department of health, child support enforcement, utility assistance costs, and costs associated with the court system. Finally, Schramm considered the direct costs to the federal government, such as for food stamps and Temporary Assistance for Needy Families. Schramm also noted possible indirect costs to society such as costs associated with increased crime and domestic violence.

32. Schramm, *supra* note 31.

33. Mark Attridge, *Business Case for the Integration of Employee Assistance, Work-Life and Wellness Services: A Literature Review*, 20 J. WORKPLACE BEHAV. HEALTH 31, 36 (2005).

34. *Id.*

35. See generally Patricia A. Herlihy & Mark Attridge, *Chapter 4: Research on the Integration of Employee Assistance, Work-Life and Wellness Services*, 20 J. WORKPLACE BEHAV. HEALTH 67 (2005).

36. The survey was sent to a sample of human resources professionals randomly selected from SHRM's membership database, which included approximately 250,000 individual members at the time the survey was conducted. SHRM's members come from all over the world and all disciplines of human resources; SHRM is an individual membership organization with no corporate or institutional memberships.

37. SOC'Y FOR HUMAN RES. MGMT., 2010 EMPLOYEE BENEFITS SURVEY REPORT (2010), <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/2010SurveyFindings.aspx>.

38. Ellen Galinsky et al., 2008 National Survey of Employers (2008), available at <http://familiesandwork.org/site/research/reports/2008nse.pdf> (in this study, fifty-three percent of employees in the sample worked in small organizations with fifty to ninety-nine employees, twenty-two percent worked in organizations with 100 to 249 employees, sixteen percent worked in organizations with 250 to 999 employees, and nine percent worked in organizations with 1000 or more employees. Seventy-seven percent of employers were for profit organizations and twenty-three percent were nonprofit, which excluded governments and publicly funded educational institutions).

39. Eli R. Stolzhus, *Access to Wellness and Employee Assistance Programs in the United States*, Bureau Lab. Stat. Chart 4 (Apr. 22, 2009), <http://www.bls.gov/opub/cwc/cm20090416ar01p1.htm>.

40. Paul Courtois et al., *Employee Assistance and Work-Life: Lessons Learned and Future Opportunities*, 19 EMP. ASSISTANCE Q. 75, 79 (2004); Attridge, *supra* note 33, at 34–35.

41. Mark Attridge, *Resources for Employers Interested in Employee Assistance Programs: A Summary of EASNA's Purchaser's Guide and Research Notes*, 25 J. WORKPLACE BEHAV. HEALTH 34, 40 (2010).

42. *Id.*

43. Darryl L. Bayer, *EAP Family Therapy: An Underutilized Resource*, 10 EMP. ASSISTANCE Q. 35, 39–42 (2008).

44. *Id.* at 42–44.

45. *Id.*

46. *Id.*

47. *Id.*

48. Selvik, *supra* note 17, at 18.

49. *Id.*

50. *Id.* at 20–21.

51. *Id.* at 21.

52. *Id.*

53. Markman et al., *supra* note 5.

54. Forthofer et al., *supra* note 8, at 602.

55. Schaer et al., *supra* note 4, at 84.

56. Courtois et al., *supra* note 40, at 76 (EAPs are more common in large businesses; over ninety percent of Fortune 500 employers offer EAPs).

57. Attridge, *supra* note 33, at 44.

58. Galinsky et al., *supra* note 38.

59. Shumway et al., *supra* note 16, at 71.

60. *Id.*

61. Charlotte Garvey, *Access to the Law*, HR MAG., Sept. 1, 2002, at 83.

62. NAT'L CTR. FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS: AN ANALYSIS OF 2009 STATE COURT CASELOADS (2011), available at www.courtstatistics.org/FlashMicrosites/CSP/images/CSP2009.pdf.

63. NAT'L CTR. FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS: AN ANALYSIS OF 2008 STATE COURT CASELOADS (2010), available at www.courtstatistics.org/Other-Pages/~media/Microsites/Files/CSP/EWSC-2008-Online.ashx. (the increased numbers of custody cases reflect a picture for courts that is growing more complicated with cohabitation. As of 2002, fifty-five percent of men and fifty-nine percent of women have cohabited in a household with children); PEW RESEARCH CTR., THE DECLINE OF MARRIAGE AND RISE OF NEW FAMILIES (2010), available at <http://pewresearch.org/pubs/1802/decline-marriage-rise-new-families> (finding an eightfold increase over the last fifty years in the percentage of children born to unmarried mothers—from five percent in 1960 to the current figure of forty-one percent; cohabiting partners may never need to seek court involvement but if they have children—even if never married—they may need to seek court resolution for issues of custody, visitation, and child support).

64. Randall T. Shepard, *The Self-Represented Litigant: Implications for the Bench and Bar*, 48 FAM. CT. REV. 607, 607–17 (2010).

65. REBECCA LOVE KOURLIS & DIRK OLIN, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *REBUILDING JUSTICE: CIVIL COURTS IN JEOPARDY AND WHY YOU SHOULD CARE* (2011).
66. Weinstein & Weinstein, *supra* note 20, at 367.
67. Janet Weinstein, *And Never the Twain Shall Meet: The Best Interests of Children and the Adversary System*, 52 U. MIAMI L. REV. 79, 79–175 (1997).
68. Paul R. Amato, *The Consequences of Divorce for Adults and Children*, 62 J. MARRIAGE & FAM. 1269, 1269 (2000).
69. Joan B. Kelly & Robert E. Emery, *Children's Adjustment Following Divorce: Risk and Resilience Perspectives*, 52 FAM. REL. 352, 352–55 (2003).
70. Catherine C. Ayoub et al., *Emotional Distress in Children of High Conflict Divorce: The Impact of Martial Conflict and Violence*, 37 FAM. & CONCILIATION CTS. REV. 297, 299 (1999).
71. KOURLIS & OLIN, *supra* note 65.
72. Jana B. Singer, *Special Issue: For the Sake of the Children: Collaborations Between Law and Social Science to Advance the Field of Family Dispute Resolution: Dispute Resolution and the Postdivorce Family: Implications of a Paradigm Shift*, 47 FAM. CT. REV. 363, 363–65 (2009).
73. Nancy Ver Steegh, *Family Court Reform and ADR: Shifting Values and Expectations Transform the Divorce Process*, 42 FAM. L.Q. 659, 659 (2008).
74. *Id.* at 659–69; Weinstein & Weinstein, *supra* note 20, at 394–400.
75. Weinstein & Weinstein, *supra* note 20, at 378.
76. Ver Steegh, *supra* note 73, at 669.
77. Barbara A. Babb, *Reevaluating Where We Stand: A Comprehensive Survey of America's Family Justice Systems*, 46 FAM. CT. REV. 230, 233–34 (2008).
78. Ver Steegh, *supra* note 73, at 668–69.
79. *See generally* Deborah J. Chase, *Pro Se Justice and Unified Family Courts*, 37 FAM. L. Q. 403, 403–25 (2003).
80. Andrew Schepard, *An Introduction to the Model Standards of Practice for Family and Divorce Mediation*, 35 FAM. L.Q. 1, 3 (2001).
81. Ver Steegh, *supra* note 73, at 663.
82. *Id.* at 663–64; *see generally* Christine A. Coates et al., *Parenting Coordination for High-Conflict Families*, 42 FAM. CT. REV. 246 (2004).
83. AUSTRALIAN NAT'L AUDIT OFFICE, DEP'T OF FAMILIES, HOUS., CMTY. SERV. & INDIGENOUS AFFAIRS, *IMPLEMENTATION OF THE FAMILY RELATIONSHIP CENTRES INITIATIVE 13–14* (2010) <http://www.anao.gov.au/~media/Uploads/Documents/2010%2011%20audit%20report%20no%201.pdf>.
84. *Id.*
85. *Id.*
86. AUSTRALIAN GOV'T, DEP'T OF FAMILIES, HOUS., CMTY. SERV. & INDIGENOUS AFFAIRS, *OPERATIONAL FRAMEWORK FOR FAMILY RELATIONSHIP CENTRES 1* (2007), *available at* [http://www.ema.gov.au/www/agd/rwpattach.nsf/VAP/\(9A5D88DBA63D32A661E6369859739356\)-Operational+Framework+for+Family+Relationship+Centres.pdf/\\$file/Operational+Framework+for+Family+Relationship+Centres.pdf](http://www.ema.gov.au/www/agd/rwpattach.nsf/VAP/(9A5D88DBA63D32A661E6369859739356)-Operational+Framework+for+Family+Relationship+Centres.pdf/$file/Operational+Framework+for+Family+Relationship+Centres.pdf).
87. *Id.*
88. Ver Steegh, *supra* note 73, at 667.
89. *Id.*
90. *Id.*
91. KOURLIS & OLIN, *supra* note 65, at 163.
92. John H. Beisner, *Discovering a Better Way: The Need for Effective Civil Litigation Reform*, 60 DUKE L.J. 547, 566 (2010).

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