

NEVER MARRIED PARENTS: IS THEIR SITUATION DIFFERENT FROM DIVORCED PARENTS?

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Much has been written about the parenting of divorcing and divorced couples and the needs of their children. It is important to assist divorcing parents to put aside their emotions toward the “ex” in the interest of raising their children in as nurturing, consistent and stable an environment as possible. Yet millions of other children are born to parents who were never married. Little of the co-parenting literature is directed to these parents and their children. It is important to inquire as to the extent to which guidance for divorcing families applies to the never married parent population.

It was not until the '70s and early '80s that the pejorative term “illegitimate child” fell out of favor in our culture. The term reflected the guilt and shame attached to the “profligate” behavior of couples who had children out of wedlock. In line with the second-generation rights movements of the '70s and '80s, many objected to the term “illegitimate” as blaming a helpless child. Advocates declared that all children were legitimate regardless of the circumstances of their birth. The alternative “born out of wedlock” came into favor for a while, but in the past 20 years many people use no term at all, unless perhaps when asked to describe the circumstances of a child’s birth.

Never married parents are not a unitary group. Many adults, especially under 30, live together in what is still called co-habitation, and in some states this status is still illegal (but rarely enforced aside from being used as a tool in a nasty, contested divorce). In a few states, couples are considered “common law wed” after they reside together for a certain period such as seven years. As with married couples, co-habiting persons may or may not wish to have children together. One still hears of couples that decide to marry when they learn that the woman is pregnant, suggesting that “legitimacy” still connotes virtue or benevolence toward a child. In most cases, however, the couple chooses not to marry and incorporates their child into their family.

Today many children are the product of relationships in which their parents never co-habited. Perhaps these parents at one time anticipated an enduring relationship. Or perhaps no such relationship was considered and here the child is often referred to as an “accident”. It is fairly common for parents to sever their ties as intimate partners shortly after the pregnancy becomes known or the child is born. Either or both parents may move quickly into other relationships, sometimes bringing their significant others into contact with the child. This situation can be volatile and often results in conflicts between the parents which may bring them to court.

Because the parents were not married, controversies concerning their child may lead to a petition being filed in the family court or juvenile and domestic relations court (depending on the state). Parents do not necessarily file petitions because they feel custody needs to be determined. Some wait years, say until the child is enrolling in school and a custody order is required.

Due to the volume of family cases, even in courts which support mediation, little attention is generally paid to them. A mediated agreement often is done in one session, in part because the parents usually do not have a desire to “go to court.” The child in question does not attend the mediation unless the parents cannot make child care arrangements. Busy courts want to minimize the amount of court time spent on family cases, so hearings are usually not held except in contested cases (which often involve allegations of child abuse).

Mediation provides an opportunity for fathers to become involved since they must attend the session. While some fathers advocate for “50/50” parenting, many more are passive. Sometimes mothers have brought them to court in an effort to get them involved with their child (especially a son!). One does not often see the strident advocacy of a father that can be a major factor in a divorce proceeding. The longer that a father (or mother) has been uninvolved in their child’s life, the more difficult it seems to be to motivate them to participate.

How does the nature of the relationship between the never married parents (i.e. long-standing and “family-like” vs. almost non-existent) affect the situation of the child? I am unaware of research on this question, so I will rely on my observations in a family court, which may or may not be representative. Certainly never married, formerly co-habiting persons experience some of the same anger, hurt, grief and loss when their relationship ends. My impression, however, is that these feelings are less intense and last for a shorter period because the emotional investment of the partners is often less than in a marriage. In addition, never marrieds are less likely to purchase jointly held assets, such as a home. (TV’s Judge Judy often chastises former never married couples for foolishly buying things together.) By contrast, in a divorce, assets (and debts) often provide the fuel for conflicts, which may be damaging to the child.

Never marrieds appear to have less dialogue about how their child will be parented, at least before they come to court mediation. As noted earlier, a considerable amount of time may pass—even years—before someone petitions. There may arise a destabilizing factor such as a new boyfriend or girlfriend who is interacting with the child. In one case, a mother tacitly permitted the father of the child having *de facto* sole custody for four years until she learned that the child was calling the father’s wife “Momma”. In cases where the child is mostly with their mother, the father may petition the court with good reason, questioning the presence of a boyfriend in her household. Research shows that the incidence of child abuse is high in this type of situation, especially when the mother leaves the child in the care of the man.

What about cases in which there was little or no relationship between the parents when the child was conceived or born? In mediation, perhaps because the parents have little history

between them or may have moved on to other partners, there is usually little acrimony in such cases. An exception may occur in cases-usually involving young parents-where the child is with the mother and she doubts the father's capacity or judgment to take proper care of the child. If the mother approves of the child's paternal grandmother as a part-time caretaker of the child, then the situation can be quickly resolved. I have had success with suggesting to the mother (who often has assistance from *her* mother with the child) that she invite the father to her home and to demonstrate to him critical skills such as changing diapers, playing with the child and bathing him. In 1-2 sessions the mother's anxiety usually lessens since the father has shown that he now has the skills to do the job.

In mediation never married parents, provided there are not extraneous factors such as problematic significant others, are often surprisingly amenable to joint legal custody, though shared physical custody may be less agreeable to one parent. Issues about physical custody often seem to be more about a perceived sense of fairness or the fear of losing out as a parent than anything else.

There are difficulties in the situations of never married parents that need to be pointed out. Generally speaking, the income and education levels of these parents are lower than divorcing couples. Relatively few parents hire attorneys and in even fewer cases are both represented. While as a mediator I sometimes find attorneys to be a hindrance to the process, I also recognize that there can be significant merit in receiving legal counsel concerning one's family case. Finances are the main reason why few parents in these cases are represented.

In most divorce cases there is sufficient wealth available to provide for the basic needs of the child after the divorce. In many never married cases, neither party has private medical insurance for themselves or their child. I have mediated quite a few cases in which the parent who has the child the most (usually the mother) is receiving Medicaid. The other parent (usually the father) may make a decent wage, relative to this population, but his income has not been reported so there may be a fraud situation.

In instances where the parents or their child (or both) need additional assistance such as therapy, this is less likely to be arranged due not only to the cost, but also the culturally weaker support for therapy at lower socio-economic levels and the relative lack of community resources available to these parents and children.

Since I also maintain a small private mediation practice, I have the opportunity to compare the impacts on children of divorce vs. the dissolution of a never married relationship. Overall, I find that the emotional intensity of the divorce process is higher. Parents may use overt disputes over property and other assets as a means of fighting through their children. Society's relative lack of recognition of never married break-ups, compared to divorces, means that never marrieds do not have an expensive, antiquated forum called divorce court in which to seek redress for real or perceived wrongs. Most of the disadvantages that children of never marrieds face accrue from the lower economic and education status of their parents.

