Joint custody law problems cited by Lafayette lawyers

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BATON ROUGE — Louisiana's joint custody law is causing more problems than it solves, two Lafayette attorneys and a psychiatrist say.

Attorneys Bob Cole and Diana Simon and psychiatrist Dr. Ken Boullion of Lafayette told a legislative panel that joint custody is not working as planned by the Legislature and is being used to manipulate spouses into accepting less child support in exchange for full custody.

In 1983 the Legislature adopted a law which sets up the presumption that joint custody is best for the children of divorced parents. To prove that joint custody is not best, a parent must prove that the other spouse is unfit. This often results in vicious court battles.

The Legislature last year almost passed a revision of the law which makes joint custody optional. The bill passed the Senate and was approved by a House committee but died on the floor of the House. A study committee was created to find out if changes are needed.

Cole and Simon, who say they are often on differing sides of divorce cases in court, agreed yesterday and told the study committee that the law should be changed.

Cole pointed out that few judges agree on just what is "joint custody." Some believe it is a 50-50 sharing of the responsibilities of caring for children and some believe it is a 50-50 split in time spent with each parent.

When asked about how joint custody is treated in Lafayette, Cole said "It varies from judge to judge. Some are totally opposed to it."

Boullion said "I've seen such crazy decisions. A judge in Ville Platte believes it means 50 percent of the time. One child attends kindergarten in Lake Charles one week and the next in Lafayette. The law meets the needs of the parents, not the needs of the children."

Simon said she believes "Joint custody in the initial breakup of a marriage is not in the best interest of the children." Most divorces involve "conflict situations" which are filled with "emotional rage" and the children are trapped in the middle.

Joint custody is more likely to work after the divorce is settled and parents' emotions settle, she said.

"As wounds heal, as things settle down, they can work out joint custody on their own in the best interest of the children. Joint custody (immediately following divorce) forces people into further conflict."

Simon, who says she mostly represents men in divorce cases, is opposed to the old state law that usually gave custody to the mother.

Joint custody works in about 10 percent of the cases, she said. These are usually the ones where parents call an end to their marriage without vicious court battles.

In some, however, the fight over blocking joint custody gets vicious.

"It gets dirty and it gets ugly," Simon said. "They're scared and they're threatened."

Families are "polarized" in the courtroom and "litigated custody cases are less likely to work."

 Custody is often used as a bargaining tool in settling support battles, Cole said. Attorneys offer to settle custody fights by compromising on economic issues.

But when joint custody works, there rarely is a problem in collecting support payments, Simon said. When a parent has regular contact with a child, he is more likely to stick to the support agreement.

Boullion offered an answer to the problem — take the custody issue out of the courtroom where it sometimes comes down to who can dig up the most dirt on the other parent.

Instead of having judges make custody decisions, assessment teams should investigate and settle the issue, he said.