

PARENTING COORDINATION FOR HIGH-CONFLICT FAMILIES

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The increasingly widespread use of parenting coordination to provide ongoing, intensive case management of higher conflict child custody cases recognizes the many advantages of this alternative dispute resolution (ADR) process in the family courts. The essential functions of the parenting coordination process are to create appropriate parenting plans; to build functional, enduring coparenting relationships; and to resolve ongoing coparenting disputes. In this article, an experienced multidisciplinary group from different jurisdictions across the United States examines a few of the most challenging issues that currently confront the field of parenting coordination. These include legal issues, such as the quasi-judicial authority of the parenting coordinator (PC) derived from statutory and legislative means, continuing jurisdiction of cases, and constitutional challenges. A description of cases that can benefit from the appointment of a PC is provided, as well as a judicial view of the pros and cons of the role. Essential aspects of the practice are discussed, including the importance of structure and boundaries, challenges to the use of the role, liability issues, and the PC's role in creating and managing collaborative teams to work on these cases. The article concludes with a vision of the future that highlights the need for research and training to responsibly advance this promising, emerging role.

Keywords: parenting coordination; special masters; alternative dispute resolution; high-conflict families

The past two decades have seen a progressive development of alternative dispute resolution (ADR) processes within the family court system.¹ Across the spectrum of traditional family court procedures, alternatives have been developed to serve families such as at intake with family court orientation and parent education programs,² early in the process as disputes manifest with mediation services,³ and with an increased focus on judicial case management and settlement processes prior to permitting litigation to proceed.⁴ The widespread use of these ADR processes recognizes the court's efforts to assist families through the divorce transition by not only resolving disputes and creating appropriate parenting plans but by also building functional, enduring coparent relationships.⁵ This spectrum of alternative family court services, whether privately provided or in conjunction with the family court services, is based on collaborative rather than adversarial models and on interdisciplinary professional involvement that recognizes interparental conflict as the major source of detriment to children of divorce.

More recently, Parenting Coordination models have been added to the spectrum of ADR processes to provide intensive case management for chronically conflicted child custody situations.⁶ In the early 1990s, this new professional role evolved independently in a couple of jurisdictions that were attempting to deal with high-conflict families. These high-conflict families, roughly 8% to 12% of divorcing parents, continued in chronic high-conflict

Authors' Note: We wish to thank Barbara Bartlett, J.D., for her assistance on the pending Oklahoma litigation about the Parenting Coordination role.

FAMILY COURT REVIEW, Vol. 41 No. X, Month 2003 1-17
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postdivorce and relitigated frequently,⁷ using a disproportionate amount of the court's time and resources. These parents also depleted their own economic reserves, reinforced their negative views of each other as enemies, and, most important, subjected their children to toxic conflict. Most of the disputes were minor, generated by one or both parents' need to control, punish, or obstruct the access of the other, such as one-time changes in the timeshare schedule, telephone access, vacation planning, and decisions about the children's after school activities, health care, child care, and child rearing practices.

In response to the frustration of judges that certain families were repeatedly returning to court to handle disputes about their parenting plans, a few courts began to delegate (with the consent of the parents) limited areas of authority over child custody issues to experienced mental health professionals and attorneys to settle parental disputes in an immediate, nonadversarial, court-sanctioned forum. The use of this new, quasi legal-mental health-ADR role that combined assessment, case management, mediation, and arbitration functions began to spread and is now called Parenting Coordination⁸ generically across states and provinces. In addition, the role of the Parenting Coordinator (PC)⁹ has been increasingly specified and defined, with common standards of practice emerging across jurisdictions.¹⁰ The use of parenting coordination has been cited in the literature as particularly useful in addressing difficult issues such as child alienation¹¹ and in monitoring and modifying parenting plans that need to evolve over time (e.g., with very young or special needs children or with parents who have serious issues that have restricted their parenting time).¹² Some suggest that PCs are also useful earlier in cases that appear conflicted either to assist with the development of parenting plans or in conjunction with custody evaluations, which often need intensive case management for several months during the time a custody evaluation is completed and litigated.¹³

The essential function of parenting coordination is to help families develop, implement, and monitor viable parenting plans. The proposed Florida Parenting Coordination statute provides a useful definition of parenting coordination when it states that

Parenting Coordination is a process whereby an impartial third person called a parenting coordinator helps the parties to implement their parenting plan by facilitating the resolution of disputes between parents and/or legal guardians, providing education, making recommendations to the parties, and, with the prior approval of the parties and the court, making decisions within the scope of the court order of appointment.¹⁴

PCs function outside the formal family court process, but they are accountable to the court, write and file their decisions as court orders, reports or arbitration awards, adhere to court rules and procedures, and their work (decisions and conduct) is subject to judicial and professional review.¹⁵

Although research is sorely lacking on the effectiveness of parenting coordination, there is evidence that the intervention can substantially reduce relitigation rates. In one California study, in the year prior to the appointment of a PC, 166 cases had 993 court appearances.¹⁶ The same 166 cases had 37 court appearances the year following the appointment. Another survey found that the majority of parents working with a PC reported being satisfied and experiencing decreased conflict with the other parent.¹⁷

From a conceptual standpoint, the PC reinforces a parallel parenting model (low engagement, low conflict) by increasing the structure and detail of parenting plans and becoming the linkage between the parents for any interactions that become conflicted. This effectively disengages the parents from each other, allowing them to parent independently and use the

PC for any remaining coparenting issues. This parallel structure of coparenting appears to be adequate to support children's positive postdivorce adjustment.¹⁸ Through a variety of processes implemented by the PC (education, mediation, and arbitration), the parents ideally learn more functional dispute resolution strategies and conflict management that cannot occur through repeated exposure to the legal-adversarial process. At a minimum, the parents have a stable, knowledgeable, and readily accessible professional to resolve day-to-day disputes specified by the PC appointment order that otherwise would result in high interparental conflict to the detriment of the children involved.

In many jurisdictions, the scope of authority and areas of decision making of the PC tend to be limited and specified by the PC appointment order. Most jurisdictions impose limits on the PC's authority regarding custody determination, relocation, or substantial changes to the parenting plan. Similarly, most jurisdictions specify that the process is nonconfidential, that the PC has access to nonparties involved with the family (e.g., health and education professionals), the children, and any information necessary to execute his or her duties. The PC is often entitled to direct children and parents to obtain third-party services (e.g., counseling, drug testing and/or treatment, and parent education).¹⁹

This article will address a few of the most challenging issues that currently confront the field of parenting coordination. The Parenting Coordination role is facing legal challenges because the PC functions on the boundary of the legal and mental health paradigms and does not fit easily into the existing sanctioned family court roles, such as judge, attorney, guardian ad litem, custody evaluator, and mediator. Selected issues are next addressed from the practice-oriented point of view of those authors of this article who have experience with the role. Many more challenging issues exist, but space limitations allow only an overview of a few.

LEGAL CHALLENGES

There have been several areas in which the PC model has been or may be the subject of legal challenge.

DELEGATION OF JUDICIAL AUTHORITY

Parenting Coordination necessarily entails a varying degree of fact finding and issue determination in each case. The degree to which this is seen as a usurpation of the court's inherent decision-making authority depends on a jurisdiction's interpretation of applicable laws and the local legal culture. The more that third-party professionals (e.g., evaluators, mediators, therapists, special masters, and referees) are looked to for assessment of a family's situation and relied on for recommendations as to "best interest" determinations, the more likely the PC model will be accepted as yet another valuable intervention at the court's disposal to assist in dispute resolution.

Legislative authority. A grant of legislative authority to make PC appointments may lend credibility to the process, implying that the legal implications have been considered and agreed on by the stakeholders. In states where dissolution law is wholly statutory, such a grant may be indispensable. An Oregon appellate case, *Heinonen v. Heinonen*,²⁰ considered the threshold issue of whether a trial court can lawfully delegate to a "visitation specialist" its decision-making power in visitation and custody disputes where one or more parties objects. Noting that the trial court's authority in dissolution proceedings is "wholly statutory," the

court found there was no Oregon statute that authorized the reference to a visitation specialist of custody and visitation modification issues. The court further opined that a difficulty with the order was that it invested the “visitation specialist” with absolute authority to resolve visitation conflicts and direct the parents’ behavior without a vehicle for judicial review of the “visitation specialist’s” findings or decisions.

Idaho state has adopted a rule of court²¹ that specifically states, “*The appointment of a Parenting Coordinator does not divest the court of its exclusive jurisdiction to determine fundamental issues of custody, visitation, and support, and the authority to exercise management and control of the case.*” The rule further lists those issues that the PC may “determine” as distinguished from a list of issues that the PC may only “make recommendations to the court on.” Such differentiation implies that the legislature found a dichotomy between what is an unlawful delegation of judicial authority versus what is not. The list of issues the PC could “determine” includes “minor alterations in parenting schedule . . . which do not substantially alter the basic time share allocation” and “telephone communication with the children.” Issues which the PC is limited to making recommendations to the court on include the following: (a) what parent may authorize counseling, treatment, and school selection for a child; (b) supervised visitation; (c) the need for a custody evaluation; (d) appointment of an attorney or guardian ad litem for a child; and (e) financial matters including support, insurance, and allocation of dependency exemptions.

Limited reference of issues. In California, the most prevalent statute used for parenting coordination appointments is the special master statute.²² California Evidence Code §730 provides for a delegation of court authority for a specific issue in a case where special expertise is required (i.e., mental health evaluation in high-conflict custody cases). The courts in California had routinely ordered parties into the special master process until the appellate court ruling in *Ruisi v. Therio*.²³

In *Ruisi*, the court’s order provided that the special master “hear and consider any and all issues regarding custody.” The court noted the basic constitutional principle that judicial power may not be delegated without statutory authority, and held that a “general” reference to a third party empowered to make a conclusive determination without further action by the court required consent of both parties.

However, the *Ruisi* court further explained that a “special” reference, whereby a third party would make advisory findings that do not become binding unless adopted by the court after its independent review thereof, did not require consent of the parties. Where the parties do not consent, the authority of the trial court to refer any part of a case to a special master “is limited to particular issues” and “does not permit a reference of all the issues in an action.” The court found that the trial court’s order containing a “sweeping reference of ‘any and all issues regarding custody’” was not limited to “strictly factual issues” as required by the applicable statute and was overly broad.

Although it seems the court’s ruling in *Ruisi* would authorize a delegation of authority that is circumscribed to factual questions on specified controversies which are then subject to judicial review, this case has been interpreted by California courts such that the appointment of a special master requires the agreement of both parties.

Opportunity for judicial review. The cases above point to the opportunity for judicial review as being a touchstone in what may constitute a lawful delegation of authority versus what is an unlawful delegation of authority. Thus, many states have implemented PC proce-

ture that provides for the court to review and approve a PC's recommendations and an opportunity for a dissatisfied party to object.

However, one state has provided that this is not sufficient in and of itself, at least with respect to arbitration. In the case of *Kelm v. Kelm*,²⁴ the Supreme Court of Ohio ruled that matters of child custody and parental visitation in domestic relations cases are not subject to arbitration, and that the "authority to resolve disputes over custody and visitation rests exclusively with the courts." The Court reasoned that the use of arbitration to resolve such disputes conflicts with the duty of the domestic relations courts to protect the best interests of children.²⁵ The Court also opined that the opportunity for de novo judicial review of an arbitration award destroys the parties' expectation that an arbitration award will be final, is wasteful of time and duplicative of effort, and, thus, "it does not seem advantageous to the best interests of children that questions of custody be postponed."

CONTINUING JURISDICTION

An increasingly thorny but important issue jurisdictions face when implementing the PC model is the concern that judges cannot appoint a PC whose intervention continues after the case has concluded. The reasoning is that the case is no longer pending. Generally, judges do not allow cases to remain open on their dockets after a final judgment is entered. A common court administration scenario where a dissolution judgment or parenting order has been filed and signed is for the case to be terminated on the judge's docket and the file closed. In many instances, the only way to reactivate a case is by one of the original parties filing a motion to invoke the continuing jurisdiction of the court.

Although this issue has not been specifically addressed as it pertains to parenting coordination, it has been considered in other related contexts. The court's decisions in these cases provide information as to how other jurisdictions might approach the "continuing jurisdiction" issue in a PC case.

Continuing jurisdiction invoked by motion. Several jurisdictions provide that while the jurisdiction of the court "continues" after judgment, it is "invoked" by a party's filing of a motion. In *Eden v. Eden*,²⁶ the concept of "continuing jurisdiction" was considered with respect to an appeal from a qualified domestic relations order (QDRO). The court noted that the continuing jurisdiction of the trial court over various domestic relations matters is authorized by statute, for example, the court retains jurisdiction to modify parental rights and responsibilities, child support, and visitation after entry of judgment (R.C. 3105.65). Ohio Civil Rule 75(J) provides that the continuing jurisdiction of the court is "invoked by motion filed in the original action." The court ruled on the appropriate statute for service of process to be applied where the continuing jurisdiction of a court to modify such orders has been invoked by the filing of a party's motion.

Statutory authority. In California, the special master model addresses the issue of continuing jurisdiction by appointing the parenting coordinator under Code of Civil Procedure 638. This law states that a referee appointed by agreement of the parties does not require that a case be open or that an action be pending before the court to function as a parenting coordinator in the case.

An Idaho statute, I.C. 32-717, appears to specifically confer "continuing jurisdiction" upon a trial court to "give such direction for the custody, care and education of the children of

the marriage as may seem necessary or proper in the best interests of the children.” The court may act both “before and after judgment.” The statute does not specifically require a motion to “invoke” the continuing jurisdiction of the court.²⁷

One other state has similarly legislated that “continuing jurisdiction” continues after entry of judgment and without the filing of a motion to “invoke” the court’s authority. Minnesota Statutes 2002, 518.1751,²⁸ Parenting Time Dispute Resolution, explicitly states that the court may appoint a “parenting time expeditor” to resolve parenting time disputes “*while a matter is pending . . . or after a decree is entered.*” The appointment may be made at the request of either party, the parties’ stipulation, or upon the court’s own motion. A parenting time expeditor may be appointed to resolve a one-time parenting time dispute or to provide ongoing parenting time dispute resolution services. The statute directs that the appointment may be made without the necessity of the parties appearing in court by submitting a written agreement.

On the other hand, an Oregon appellate case, *Thomason v. Thomason*,²⁹ held that a trial court lacked authority to appoint an attorney for the children in a dissolution case post-judgment because no action was pending as required by the court’s interpretation of the applicable statute. That statute specifically contained the language “*whenever a domestic relations suit . . . is filed, or whenever a habeas corpus proceeding or motion to modify . . . is before the court.*” The court determined that this language evidenced a legislative intent for a restricted grant of authority as to the timing for appointment of counsel for a child.

“*Continuing jurisdiction*” language in appointing order. In light of the *Thomason* case, *supra*, an Oregon jurisdiction has inserted the following language into its PC appointment order:

The court shall have continuing jurisdiction for purposes of modification, enforcement and clarification of the parent plan until the term of the coordinator has expired or the coordinator’s appointment has otherwise been terminated, and all objections are resolved. The court’s retention of jurisdiction does not affect the finality of the underlying judgment, which is intended by the court to be a final judgment under ORS 19.205.

This language may be sufficient, given there is no existing statutory authority to the contrary as there was in *Thomason*. In fact, the Oregon legislature recently amended existing law and provided by statute that PCs may be appointed for the purpose of “*monitoring compliance with court orders,*” and “*providing parents with problem solving, conflict management and parenting time coordination services or other services approved by the court,*” inferring that this authority extends postjudgment.³⁰ However, this language has not yet been reviewed and ruled on by the Oregon courts as of the date of this article.

INFRINGEMENT OF CONSTITUTIONAL RIGHTS

The constitutionality of the Oklahoma Parenting Coordinator Act, 43 O.S.Supp 2001 120.1 et seq., has been questioned in a case currently pending before the Supreme Court of Oklahoma, *Barnes (now Hendrix) v. Barnes*.³¹ Appellant (Mother) claimed that the Act “is unconstitutional in requiring nothing more than a best-interest determination to infringe on a parent’s fundamental right to make child-rearing decisions and in treating a divorced parent differently than a married parent.” Although the Act provides that a party may object to the

report of a parenting coordinator pursuant to 120.4 of the Act and thereby obtain a court review, the appellant cited the PC's "right to make binding decisions as to any problems relating to time spent with their child and to conduct any investigation with anyone, including the child, and to collect any records and any documents" as an infringement of a parent's fundamental child-rearing rights. Citing authority for the proposition that a court may not lightly replace a parent's decision with their own, appellant-noted language from another state court case stating that "it does not serve the interests of the parties, the judiciary, or the public to require trial courts to 'micromanage' family decision making."³² The appellant cited the U.S. Supreme Court's decision in *Troxel v. Granville*,³³ for the proposition "that a parent's interest in the care, custody, and control of her child 'WHERE SHOULD CLOSING QUOTE BE? is perhaps the oldest of the fundamental liberty interests recognized by this Court."³⁴ As of the writing of this article, there has been no decision by the Oklahoma Supreme Court.³⁵ The legislature, however, amended the Act in 2003 to require a finding of high conflict in addition to a finding of best interest.³⁶ The legislature further amended the statute to vest the trial court with exclusive jurisdiction over custody, visitation, and support, and the authority to exercise management and control of the case. The PC may only make temporary departures from the parenting plan if authorized by the court.³⁷

CHALLENGING ISSUES

CASES THAT MAY BENEFIT FROM PARENTING COORDINATION

A proactive approach is used in some jurisdictions in which parenting coordination is ordered at the time of the entry of permanent orders in the event that the parents are unable to agree in the future about issues regarding the children. The judge, attorneys, or custody evaluators astutely recognize the signs of intractable long-term conflict and plan for it during the finalization of the divorce. More frequently, however, cases are usually referred to parenting coordination because they are chronically litigious and difficult to manage. These parents have often had several attorneys, evaluators, and mediators—professional-hopping and shopping is rampant. Their court files are thick with motions, court appearances, and allegations of wrongdoing by the parents.

Parenting coordination may not be effective in cases in which a parent chronically refuses to follow court orders or has severe personality disorders, mental illness, or substance abuse. The PC may be able to protect the children from the impaired parent, but generally will serve more as a "thumb in the dike" rather than a change agent. The PC's function may become simply to arbitrate all parenting disputes when mediation, education, and coaching on appropriate coparenting have been ineffective.

JUDICIAL SUPPORT

The authors of this article have found that most judges welcome parenting coordination. Judges recognize that it saves much court time and relieves the judge of much of the stress that the most conflicted cases inflict on the judge because the prospect of any acceptable resolution through formal court proceedings is so unlikely. Judges should support the PC process while still being neutral. When a PC is having a difficult time with one or both parties, the PC should be able to request a case management conference with the judge and all the

parties. The PC should be able to present the problems and any suggestions for solutions to keep the process moving, and to expect that the judge will be supportive of the PC's position. If such difficult parties sense a lack of determination or vacillation on the part of the judge, they will likely dig their heels in and become even more difficult. On the other hand, the judge must be alert to listening for signs that this is a case in which the PC is not well matched with the parties, is using inappropriate techniques, does not have the necessary skills, or appears to be incurring higher fees than expected. Although the parenting coordination process is designed to operate outside the courthouse, reasonable oversight is necessary to maintain the integrity of the process, and the judge should be responsive to this need. Monitoring and ensuring the quality of PC appointees also needs to be a priority.

Judges who are supportive of this process can be very influential in its widespread use. Inquiries in appropriate cases as to the potential for the PC process will usually not fall on deaf ears. Attorneys can benefit because they can be relieved of some of their most nightmarish cases, and parents are usually eager to use a PC because they get prompter attention, and the attention comes from one who they may consider to be an authority figure. Each party usually assumes they will come out on top because they think they are right and that the other party is clearly in the wrong. For these reasons, the judge has fertile ground on which to sow the seeds of persuasion about the use of parenting coordination. One of the challenges, however, is to avoid overusing parenting coordination—every case does not need a PC.

Some judges may not be supportive of the PC process. Parties in such cases may consider asking for a referral to a general or special master or hearing officer. These quasijudicial officers usually have a high caseload and are used to short hearings and often handle case management conferences. Thus, they may be more receptive to a referral to a PC. Usually, a judge will routinely accept a recommendation of a master or hearing officer.

SELECTION OF A PC

Choosing cases that are amenable to this process should also be a priority; otherwise, considerable time and expense of all the parties will be wasted and the court will still wind up with the responsibility for achieving an outcome in the courtroom setting. Because the PC is working with some of the more difficult parties in the family law system, it is extremely important to match the right PC, and the right PC process, with the parties in the case. There should be some consideration given to the practice style and attitude of the attorneys, if any, in the case. Each PC has a different style and emphasis, and any hope for success with difficult parties demands close attention to matching all the personalities and processes. For instance, some PCs use an educational approach and seek to promote cooperation by educating the parents as to the developmental needs of children and the harm that is inflicted on the children by continual parental conflict. Parents who appear to be logical, well-motivated, highly moral, and secure in their personal life may respond to this approach even though personal dynamics have created an adversarial relationship with their ex-spouse. On the other hand, parties with emotional insecurities and less stable personal lives may need behavioral modification techniques such as negative consequences for destructive or uncooperative behavior. This may be imposed by the PC if he or she has arbitration power, or the PC may make a recommendation to the judge for an appropriate sanction. Some PCs are more comfortable and effective at using this stronger behavioral modification approach. The choice could also be as simple as choosing a male or female, depending on which gender can relate to or counter the more problematic parent. If attorneys are qualified to act as a PC, their status as an authoritative figure may cause some parents to more quickly follow suggested path of

cooperation, whereas the same parents may tend to rebel against a (perceived) softer mental health professional. The concept of matching the PC to the parents may warrant some further consideration regarding who may act as a PC. If the qualifications and the discretion of the court are too limited, some potentially effective professionals may be excluded when they have exactly the right style and experience to handle the particular conflicted case. One approach would be to have established qualifications but allow the judge with the consent of the parties the ability to appoint any person deemed qualified by experience and training. Jurisdictions who have dealt with the issue of qualifications differ in the formality and extent of education and training required for the PC but have all generally looked first at areas of required expertise in developing qualifications.³⁸

MAINTAINING STRUCTURE AND BOUNDARIES

Another challenge that PCs face as they navigate the pulls for alignment, challenges to authority, and appeals for reprimand is to hold steady, maintaining neutrality and role definition. To avoid the difficulties of redefinition, retraction, and recoument, articulating boundaries in writing and practice in the beginning and an ongoing basis is part of the management and educational role of the PC.

What forms of communication will be accepted? How will the PC respond to hostile communications, late payments, telephone calls, demands for an immediate response, weekend “emergencies,” or unilateral requests? How will the PC react to individual therapeutic issues? If the issues center on a change in custody, how will the PC respond? These are the predicaments that the PC frequently faces. The initial agreement between the PC and the parents will outline many of these issues, but compelling clients can and will try to elicit a helping response or sympathetic ear that may ultimately lead to a violation of the agreement, dual role, or breach of neutrality.

Clarity of role is an essential topic for thought and discussion. Advocacy for any one member of the family is never acceptable. At the same time, working to help the family collaborate, resolve their own disputes, stay focused on the child, and understand the other parent and child’s points of view is in fact advocate for the family system as a workable, viable decision-making unit.

Although it is the PC’s role to reduce tensions in the family and raise the parents’ level of skill in collaborative planning for their children, it is not the role to provide therapeutic services beyond the identification of the impasses and individual issues that impede the parent’s ability to stay focused on collaboration, other points of view, and the child’s needs. The PC’s role as practiced today requires multiple functions of assessment, education, mediation, and arbitration. This hybrid role needs definition and clarification for clients. Because the role of PC typically relies on mediation skills, the distinction between mediation and parenting coordination must be articulated at the outset of work with a family. Issues of confidentiality and reporting to the court can easily be confounded without careful review of the boundaries of the PC role.

The PC does not make custody recommendations. Doing so would compromise the PC’s neutrality and ability to work in an ongoing basis with parents. It would also require the PC to take on an evaluative role, which may be considered a dual role. The PC helps implement, modify, and mediate parenting plans but does not substantially change the existing court order. That authority remains with the court. A frequent challenge is to identify the point at which the PC’s role is no longer useful and/or a parent’s request for a custodial change

requires court intervention. In the initial agreement and discussion of role, the PC must make clear the issues that lead to court intervention or termination of role.

Because of the personality issues in many of these families, maintaining neutrality is often an ongoing challenge for the PC. Although it is often clear how one party may be experienced by the other, it is sometimes difficult to assess how one's own reactions may or may not be consistent with the child's experiences. Although a client can be difficult, inflexible, and challenging for the PC, that is not always the same experience for the child. The parent who demands a lot of attention to detail or requires what feels like constant responses may in fact be more relaxed and flexible with the child. Likewise, a compliant parent who seems to eagerly accept suggestions and responds to requests may be dependent on the child or engage the child in parentifying behaviors. However, the information at hand is a useful tool to educate a party about the impact of his or her behavior when the parent's observed behaviors are consistent with the reports from the other party and the children. The PC relationship becomes a training ground for maintaining appropriate boundaries within the family.

Setting limits about the kind of communication (phone, e-mail, fax); the number, length, and tone of messages; and the length and response time for interactions between the clients and between the clients and the PC sets the boundaries that hopefully can be generalized to other interactions within the family.

A number of states are exploring standards for PCs. Issues of training and qualifications, role definition and boundaries, confidentiality, informed consent, interventions and functions, boundaries of their court-ordered authority, procedures for documentation, and decision making are just some of the issues that need to be addressed. An Association of Family and Conciliation Courts (AFCC) Parenting Coordinator Task Force has recently been charged with the development of standards for PCs. These standards of professional conduct may also serve professionals in states where there is no statutory authorization or quasijudicial authority immunity for the PC as well as a model for states that are developing their own standards.

TERMINATING THE PROCESS

Placing a specific duration for the process in the order of appointment is a good idea because it will focus the participants on a deadline and gives a good milestone for the court to assess whether the process is achieving the desired goal of resolving disputes and allowing the parties to proceed with a reasonable degree of cooperation to implement their parenting plan.

There may be cases where the judge will find the PC is not being cost-effective, is at odds with one of the parties, or uses methods the court is not comfortable with, and the deadline will furnish a graceful method of having the PC exit the case.

The judge usually wants to be supportive of the process and the PC, but there has to be an end to the process. There has to be monitoring by the court, but if the parties continue to come back to court frequently, or if one of the attorneys who does not believe in the process attempts to thwart it, the judge may have to acknowledge that a PC will not work for the case and terminate the process. Sometimes this is a bitter pill for the PC to swallow, particularly because a "helping professional" may desperately want to continue trying to obtain a beneficial result. In this instance, the judge may have to be the agent of reality and terminate the process that is not working.

PRACTICAL CONSIDERATIONS FOR AVOIDING A SUCCESSFUL CHALLENGE TO THE USE OF A PC

The safest method of avoiding a legal challenge to the Parenting Coordination process is to gain the approval of the parties for using the process at the outset. If the parties stipulate to use the process, they could hardly be expected to challenge the power of the court to appoint a PC. If they also enter into an agreement as to who should serve as PC, they are less likely to challenge the actions of the person they selected, and the court is less likely to grant such a challenge.

The judge and the attorneys have the ability to “sell” the concept of a PC to the parents. This attempt to sell the process is not a gimmick or a devious approach; it is a good faith opportunity to help the parents through a process that is normally less expensive, faster, and more satisfactory to the parties. If they can gain at least a modicum of cooperation, the parents are able to be in control of the decision making. If there is a proactive approach by the judge, hopefully with the help and support of the attorneys (who may also want to get out of the case), the parties are usually very receptive. The idea of working outside the courthouse, with prompt access to a mental health or child development expert who is not in a judgmental position, appeals to even the most difficult parents. If the judge and the attorneys are unified in recommending this process, the parties tend to be receptive. If they stipulate to use the parenting coordination process, and to the appointment of a specific person as the PC, it will be much harder to successfully get the PC removed if one parent does not like the way the process is going.

Some of the most frequent reasons given for removing a PC are the following: allegations of bias, creation of conflict with the coordinator by refusing payment of the bill for services, or setting up conflict on implementation of the parenting plan by refusing to compromise or cooperate. The granting of arbitration powers to the PC, although often helpful in expediting resolution of minor disputes, can also carry a risk of a request for removal because of dissatisfaction with the decision. Thus, including this clause in the order of appointment should be carefully considered and probably only utilized where both parties agree to the grant of this power and have some reasonable potential for modest cooperation. The PC is more likely to avoid a challenge by being open and advising parties of their right to ask for a discharge of the PC at the beginning of the process, and by making certain that the process does not become an adversarial battle between the PC and one of the parties. If there is a court hearing on a motion to remove the PC, the greater the adversarial relationship between the PC and one party (however irascible), the more likely the court will conclude that the PC has lost his or her effectiveness and feel that removal is necessary.

LIABILITY OF THE PC

Any professional can be sued for negligence by violating the standard of care for the particular profession. The professional can also be the subject of a complaint to any regulatory board governing their profession or removed from a voluntary professional organization. There is no effective method to prevent a disgruntled party from attempting one of these actions.

Court-appointed experts normally are accorded a quasijudicial immunity for actions appropriately taken under the court’s order. For a parenting coordinator, the risk is that because the order and the activities may not have a firm basis in any statute or case law and

also are breaking new ground in professional duties by merging different functions, the court-expert type of quasijudicial immunity may be in jeopardy. In other words, there may be no actual expert designation for these particular duties, or an appellate court may say the trial court had no authority to appoint. Having documented standards of conduct for PCs within a particular jurisdiction may be an important consideration in the quest to have the PC considered for expert witness quasijudicial authority.

Other considerations for authority to appoint a parenting coordinator:

1. The PC might consider not serving unless the parties stipulate to the order with broad powers. Such a stipulation may insulate the PC from liability more than a court appointment without the parties' consent.
2. Acknowledge in the order that there is judicial or quasijudicial immunity and that there will be no liability unless there is actual malice. Remember that public policy may be against such a limitation of liability.
3. Professional liability insurance is available in many jurisdictions, if there is some authority for the appointment of a PC.
4. Consider having the parties agree that the PC has the appropriate professional qualifications and skills for the appointment. This agreement should be reflected in the order of appointment.
5. Consider including the following language in an order appointing a PC:

It is the intent of this order to include the broadest possible authority for the parenting coordinator to facilitate the smooth and cooperative implementation of the parenting schedule for the full family's benefit under (the dissolution of marriage statute defining the need to avoid harm to the children in custody cases). Thus, the parenting coordinator may use the powers of a guardian ad litem for the child under (the state's guardian ad litem statute), where those functions will assist in carrying out this Court's adjudication of a parenting plan. It is also the intent of the Court that the parenting coordinator shall have full benefit of quasijudicial immunity as a Court-appointed expert and the immunity provisions provided for in (the state's guardian ad litem statute). The parties have stipulated to this appointment and the powers granted herein to the parenting coordinator, and that the person appointed has the requisite professional qualifications and professional skills to do the work required.

Reference to mediation or arbitration powers is not included in the above provision to avoid the appearance of inappropriate dual roles and the potential for conflicting ethical standards.

The suggestions and discussion above are general in nature and are intended to provoke thought and discussion. Any attempts to use these ideas should be with the advice and consultation of an attorney because of the sophistication of the legal concepts involved. It is suggested that the parenting coordinators, family law attorneys, and judges in a particular jurisdiction collaborate regarding the use of these ideas.

COLLABORATIVE TEAMS AND THE PC

Attorneys, therapists, teachers, school administrators, and even child care workers and coaches can become caught in the interparental conflict in a way that compromises their intended functions. The polarizing pulls of high conflict can impact and align the most competent and well-intentioned professional with one parent's partial, often distorted perceptions of the problem. When multiple professionals are involved with high-conflict families, collaboration and effective teamwork may not occur without coordination by one or more of the professionals.

In some of the more complex, high-conflict cases, the PC may serve the purpose of bringing the professionals together into a collaborative team to support the parents. A PC has three ingredients that are critical to managing collaborative teams: (a) comprehensive understanding of and exposure to the family and professional system, (b) the time and availability for intensive case management, (c) the authority to monitor and enforce compliance with professional interventions and to modify the parenting plan (if appropriate), and (d) conflict resolution skills. The role of the PC in managing a collaborative team includes responsibility for the following: (a) the team's composition, (b) the team's ongoing functioning, and (c) decision making as it relates to ongoing treatment and the parenting plan. A brief description of these aspects of the PC's role with collaborative professional teams follows.

Team composition. The PC ideally will design a therapeutic intervention that requires the least number of professionals for cost-effectiveness and to decrease the complexities of team functioning as more professionals involved in high-conflict cases are not necessarily better for the families. Often the PC may work in conjunction with a child therapist, family therapist, or coparent counselor, whereas in some cases, the team may include individual therapists for the child(ren), parents, and other experts (psychiatrists, special education professionals, etc.).³⁹ Ideally, the PC will have some input into the selection of professionals who will become involved in these cases. Team composition must take into account the needs and resources of the family and involve professionals willing to work in a role that may be different than a traditional therapeutic role.

Responsibility for team functioning. The PC is responsible for setting treatment goals (often assisted by recommendations in a custody evaluation report), providing a structure for systematic review and modification of those goals, establishing and maintaining communication channels (periodic team meetings, letters, two-way communication between particular team members, communication between team members and the parents). Clear structures for team functioning, supported by written contracts (court orders, confidentiality agreements with clients, written protocols provided to the team and parents), are essential to the functioning of the team. Careful consideration needs to be given to what information therapists keep confidential (not directly relevant to parenting and coparenting), what information they share with the team, what feedback the team provides the family members, and, if necessary, what information might be provided to the court. The PC should function as the team's exclusive linkage to any court proceedings to protect the professional relationships that team members have with family members. The PC's strategic management of information is the most powerful tool and biggest challenge to effective team treatment interventions.

Team roles and hierarchy need to be clearly defined and followed. Each team member needs to understand and act according to his or her agreed upon role in the family intervention. This includes the relationship with other team members, clients, and the legal process. The PC is the team leader, and although consensus is a preferred mode of decision making in teams (and often requires considerable dialogue), it is the PC's role to make decisions either when consensus is not reached by the team or it is inappropriate for team members to provide anything more than input from their perspective. These can be decisions about the treatment or decisions required to resolve disputes about parenting issues. The PC must develop the trust and confidence of team members so as not to undermine decisions made by the PC; otherwise, splitting of the team will result, collaboration will break down, and the team will

begin to mirror the polarization in the family system. The PC also functions as a support for the team members in their work with the family. When alliances become compromised between therapist and client, as often occurs in these cases, it is the PC's role to address compliance issues, such as failure to show for appointments or fee issues. In addition, joint meetings with the therapist and client may be necessary to shore up the therapeutic relationship and ultimately, efforts on the PC's part to protect professionals from involvement in litigation may be necessary. This protective and supportive function of the PC is appreciated by therapists and often essential for professionals who are willing to work with these difficult cases.

VISION FOR THE FUTURE

Parenting Coordination is now practiced throughout North America. As is typical of new fields, there is ongoing discussion and collaboration among professionals from multiple disciplines. The issues revolve around the professional and ethical practices that provide due process and effective service for the families who are in need of the help of PC. Distinguishing the role, developing guidelines of practice and training, and managing risk are concerns for each state and province. Mentoring is one way for a new PC to get on the job training. The first few cases for a new PC would be a joint appointment with an experienced PC, which would provide protection for the neophyte and create a mentor-mentee relationship in the future. The AFCC Task Force on Parenting Coordination will be considering these issues and drafting model standards for professional conduct for PCs. Collaboration among mental health professionals, mediators, and lawyers is necessary to address these issues and design effective programs.

Although some states have PC legislation, others use Court Orders under another statute or under the mantle of inherent authority. For most states, there is no legal code that addresses the role and functioning of the PC. At this point in time, there is little consistency or clarity between states or even within a state as to the level of authority, relationship to the court, or due process issues especially related to gathering of evidence. Greater definition of the role, with a focus on the multiple functions a PC may employ and clarity about issues of confidentiality and due process, will be part of the continuing interdisciplinary conversation. Guidelines for practice emerging nationally from an interdisciplinary organization, such as AFCC, will provide a base from which states and provinces might create their own definition of the role of the PC. In addition, guidelines will be useful to professional organizations such as the American Psychological Association (APA), the American Bar Association (ABA), or the National Association of Social Workers (NASW) when they are called on to respond to complaints about PCs.

There is a major need for research of the effectiveness of this role for families. Research must focus on what kinds of families respond to Parenting Coordination and what specific functions may be more useful or effective than others. We need to answer the dual question of whether Parenting Coordination helps parents resolve their differences without returning to court, and what the outcomes of working with a PC are compared to those who continue to use the courts to help them resolve their differences.

Along with research into effectiveness of the role, there will be a need for continued emphasis on skill building for the PC practitioner. As with any new field, many practitioners will be attracted to the excitement of a new process for helping families in conflict, and some will be attracted to the opportunity to capitalize on the economic benefits of a new and trendy

practice. There will be an increasing need to advance the skill levels of all practitioners through training, networking, and regulation by minimum educational and experience levels, and opportunity for fair resolution of grievances.

With greater definition and development of the PC role, as well as research that examines the efficacy of the role, funding for more families may become a reality. At this time, there are few opportunities for families without means to avail themselves of a PC. Until states find ways to incorporate PCs into the array of court-based services, these professionals will not be available to people who do not have financial resources for such services.

As all these trends and uncertainties play out, the PC process will likely take its place as a part of a larger landscape: a continuum of services to assist separating parents in coming to the most effective parenting plan for them in the least contentious manner. This larger landscape should encompass a substantial array of services that allow forming a triangle, with the apex being those cases requiring a decision by the judge in a contested hearing. The base of the triangle will be composed of the majority of cases in which the parents are able to come to a decision with minimal intervention. Such processes include educational programs, simple mediations, and four-way conferences with nonadversarial attorneys. As the triangle narrows, more intensive and intrusive forms of intervention are necessary, including case management hearings by the judge, difficult mediations, individual and group counseling, collaborative law cases, home studies, and custody evaluations. The parenting coordination process in its classic form fits closer to the apex because it is designed to deal with moderately to highly conflicted couples. In some jurisdictions, a demand is developing for using a PC to develop a parenting plan as opposed to implementing an existing parenting plan. This is symbolic of the larger landscape in which there is a constant search for alternatives to existing traditional methods of resolving parenting disputes. In the future, it is likely that attempts will be made to expand the role of the PC process as a part of the larger trend to find a greater variety of techniques that are effective in resolving parenting disputes.

NOTES

1. JANET R. JOHNSTON & VIVIENNE ROSEBY, *IN THE NAME OF THE CHILD*, New York: The Free Press (1997); Joan Kelly, *Legal and Educational Interventions for Families in Residential and Contact Disputes*. 15 *AUSTL. J. FAM. L.* 92 (2001).

2. Jack Arbuthnot, et al., *Patterns of Relitigation Following Divorce Education*, 35 *FAM. & CONCILIATION CTS. REV.* 269 (1997); Margie J. Geasler & Karen Blaisure, *1998 Nationwide Survey of Court-Connected Divorce Education Programs*, 37 *FAM. & CONCILIATION CTS. REV.* 36 (1999).

3. ROBERT E. EMERY, *RENEGOTIATING FAMILY RELATIONSHIPS: DIVORCE, CHILD CUSTODY AND MEDIATION*, New York: Guilford Publications (1994); DESMOND ELLIS & NOREEN STUCKLESS, *MEDIATING AND NEGOTIATING MARITAL CONFLICTS*. Thousand Oaks, CA, Sage Publications (1996).

4. Donald B. King, *Accentuate the Positive-Eliminate the Negative*, 31 *FAM. & CONCILIATION CTS. REV.* 9 (1993).

5. E. MARK CUMMINGS & PATRICK T. DAVIES, *CHILDREN AND MARITAL CONFLICT*, New York: Guilford Publications (1994); Emery, *supra* note 3; ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD*, Cambridge, MA, University Press (1992); Joan B. Kelly *Children's Adjustment in Conflicted Marriage and Divorce: A Review of Research*, 39 *J. AM. ACAD. CHILD ADOLESC. PSYCHIATRY* 963 (2000).

6. S. Margaret Lee, *Special Masters in child custody case* (*ASSOC. OF FAM. & CONCILIATION CTS. NEWSLETTER*) 14 (1995); Johnston, *supra* note 1; Jessica Pearson, *Court Services: Meeting the Needs of Twenty-First Century Families*, 33 *Family Law Quarterly* 617 (1999); MITCHELL A. BARIS ET AL., *WORKING WITH HIGH CONFLICT FAMILIES OF DIVORCE: A GUIDE FOR PROFESSIONALS*. Northvale, New Jersey: Aronson (2000).

7. Maccoby, *supra* note 5; Johnston, *supra* note 1.

8. The first formal conceptions of Parenting Coordination appear to have developed out of the work of Denver metro lawyers and mental health professionals who convened a high-conflict study group in 1992 and then developed a model of Parenting Coordination. Concurrently, counties in North California were developing Parenting Coordination models derived from both mediation and special master statutes in that state.

9. The professional may be called different things in those states implementing the parenting coordination model, for example, "Special Master" in California, "Wiseperson" in New Mexico, "Custody Commissioner" in Hawaii, and "Family Court Advisor" in Arizona. All these terms appear to describe a process that is consistent with the Parenting Coordinator role.

10. Gregory Firestone et al., *Parenting Coordination in Florida: Current status and future Directions* 19 THE COMMENTATOR 17 (2003).

11. Matthew J. Sullivan & Joan B. Kelly, *Legal and Psychological Management of Cases With an Alienated Child*, 39 FAM. CT. REV. 299 (2001).

12. PHILIP STAHL, *COMPLEX ISSUES IN CHILD CUSTODY EVALUATIONS*. Thousand Oaks, CA, Sage (1999).

13. Matthew J. Sullivan et al., *Parenting Coordination: The Basics and Beyond*, workshop presented at the Florida Association of Family and Conciliation Courts (AFCC) Parenting Coordination and Legislative Forum (2003).

14. Florida Parenting Coordination Statute, working draft of proposed parenting coordination statute prepared for consideration at the FLACC Parenting Coordination and Legislative Summit, August 2003.

15. S. Margaret Lee, *The integration of ethics and the law in clinical practice*. Acting as a special master in high-conflict postdivorce child custody cases (unpublished); Matthew J. Sullivan, *Ethical, Legal and Professional Practice Issues Involved in Acting as a Psychologist Parent Coordinator in Child Custody Cases*. 42 FAM. CT. REV. (forthcoming July 2004).

16. Johnston, T. *Outcome study on special master cases in Santa Clara County*, (unpublished study) (1994).

17. Vick, M. H., and Backerman, R. (1996). Mediation/arbitration: Surveys of professionals and clients, paper presented at the Boulder, Colorado Interdisciplinary Committee on Child Custody

18. Maccoby, *supra* note 5; Kelly, *supra* note 5.

19. For more information about the implementation of parenting coordination in jurisdictions across the United States, see, AFCC Task Force on Parenting Coordination, *Parenting Coordination: Implementation Issues*, 41 FAM. CT. REV. 533 (2003).

20. 14 P. 3d 96 (2000).

21. IDAHO R. CIV. P. 16(1).

22. CAL. EVID. CODE 730. *See also*, CAL. CIV. PROC. CODE 638 and 1280.

23. 62 CalRptr2d 766 (1997).

24. 749 N.E.2d 299 (2001).

25. In an earlier case [*Kelm v. Kelm*, 68 Ohio St.3d 26, (1993)], the Supreme Court of Ohio ruled that temporary and permanent support matters could be made subject to an agreement to arbitrate. In distinguishing this holding from the 2001 *Kelm* case, *supra*, the Supreme Court reasoned "that custody and visitation have a much greater impact upon the child in terms of both the child's daily life and his or her long-term development" and, thus, the Court was "less inclined than we were in *Kelm I* to permit arbitration to encroach upon the trial court's traditional role as *parens patriae*." Cf., in the unpublished appellate decision, *Beatley v. Block*, 2000 WL 699653 (Ohio App. 5 Dist.), May 16, 2000, it was found that the trial court did not abdicate any judicial responsibility or unlawfully delegate its authority in appointing a parent coordinator. The court relied on the language of the order which prohibited the parenting coordinator (PC) from evaluating custody, and which specified the PC's fundamental role as being "to minimize the conflict to which the children are exposed by the parties." Lastly, the court pointed out that the objecting party demonstrated no prejudice from the PC's appointment nor that the PC had "usurped the role of the trial court."

26. 2003 Ohio 356, January 29, 2003 (unpublished appeal).

27. *Idaho Statutes*, available at: <http://www3.state.id.us/cgi-bin/newidst?sctid=320070017.K> (last visited on January 28, 2004).

28. *Minnesota Statutes*, available at: <http://www.revisor.leg.state.mn.us/stats/518/1751.html> (last visited on January 28, 2004). Unlike most other PC models, the PC process in Minnesota is fully confidential and the PC may not be called to testify.

29. 23 P.3d 395 (2001).

30. OR REV. STAT. 107.425(3)(a) (2001).

31. FD-98-4682.

32. *Kaiser v. Kaiser*, 23 P.3d 278 (2001).

33. 530 U.S. 57, 65 (2000).

34. "Motion To Retain" filed August 8, 2002, Supreme Court No. 98090, p. 1.

35. Once a decision has been published, it may be retrieved at the Oklahoma Supreme Court Web site, available at www.oscn.net.

36. "High conflict" includes the definition of "conditions that in the discretion of the court warrant the appointment of a parenting coordinator" OKLA. STAT. Tit. 43, 120.2 (2002).

37. OKLA. STAT. Tit. 43, 120.3 (2002).

38. AFCC Task Force, *supra* note 19.

39. Janet R. Johnston et al., *Therapeutic Work With Alienated Children and Their Families*, 39 FAM. CT. REV. 316 (2001).

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