

EFFECTIVE USE OF PARENTING COORDINATION: CONSIDERATIONS FOR LEGAL AND MENTAL HEALTH PROFESSIONALS

Matthew Sullivan and Annette Burns

Parenting Coordination (PC) is a dispute resolution and case management role to assist high conflict coparents (Coates et al., *Family Court Review*, 2004; 42, 246–262; Sullivan, *Journal of Child Custody*, 2008; 5, 3–24; Carter & Lally, *Parenting Coordination in Post-Separation Disputes*, 2014; Fidler, *Canadian Family Law Quarterly*, 2012; 31, 237–273). A revision of the original practice 2005 guidelines for parenting coordination was just published by the Association of Families and Conciliation Courts in 2019, providing an update for the family justice community about developments in the parenting coordinator (PC) role in the last 14 years. This article focuses on how family law professionals can support effective parenting coordination practice in their jurisdiction. Support begins with understanding the PC role as the most intensive intervention available at this time for high conflict coparents, and guidance about what types of cases are appropriate for referral and which are not. A description of the essential components of appointment orders, parenting coordination procedures, and court review are provided as well to best structure the parenting coordination process for success. Finally, the article addresses how jurisdictions can support the development and maintenance of this unique role.

Key Points for the Family Court Community:

- Parenting Coordination is the most intensive intervention for coparents who have intractable conflict as they implement shared parenting.
- The article describes the essential functions of the Parenting Coordination role to assist family law professionals to make appropriate appointments in their jurisdiction.
- Several procedural structures are presented that should be considered when appointing a Parenting Coordinator.
- Recommendations are provided that the Court, the bar and mental health experts support the development of Parenting Coordination in their jurisdiction.

Keywords: *Coparenting After Divorce; High Conflict Divorce; Parenting Coordination; Parenting Coordinator.*

I. WHAT IS PARENTING COORDINATION?

In the spectrum of coparenting¹ interventions available to the family court, parenting coordination is the most intensive intervention available to assist parents who share parenting time and decision-making to do so more functionally. One can think about coparenting interventions as occurring on a continuum of those that are effective with cases that have less problematic and more transitional interparental conflict and dysfunction to those that are effective with cases that have entrenched and intractable conflict. For cases with mild to moderate conflict, parent and coparent educational programs, which are becoming increasingly available on-line, can provide evidence-based psychoeducation to

Corresponding: sullypsych@hushmail.com

Author's note

Matthew J. Sullivan, Ph.D. Private Practice, Palo Alto, CA., President of the Association of Family and Conciliation Courts (AFCC).

Annette Burns, J.D., Private Practice Phoenix, AZ., Former President of the Association of Family and Conciliation Courts (AFCC).

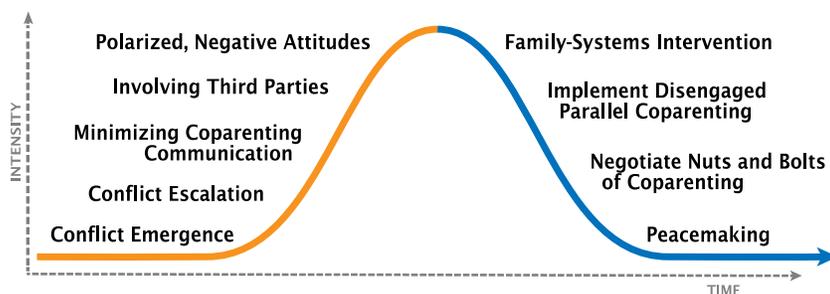


Figure 1 Phases of intractable conflict development and resolution. Source: *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium. University of Colorado, Boulder. Posted November 2003. Burgess, Heidi and Guy M. Burgess. “What are Intractable Conflicts?” <http://www.beyondintractability.org/essay/meaning-intractability>.

parents who can benefit from such information (Moran, Weinstock, & Butler, 2019). These interventions can help parents gain insight into problematic coparenting dynamics and their damaging impact on their children and acquire skills to develop more collaborative and cooperative partnerships. If this early educational intervention, which is recommended and may be required for coparents who have become court-involved, is not effective, coparent counseling, which is a confidential therapeutic intervention, may be recommended or ordered by the court to assist parents who have been assessed as having more serious, persistent conflict. When these less intensive interventions fail, mediation, either confidential or non-confidential, may be an effective dispute resolution intervention. If mediation is confidential and results in impasse, parents often return to the court to have their dispute addressed by a magistrate or judge. Some parents, even with a non-confidential mediator in place,² (whose recommendations are communicated to the court when the parties do not agree), continue to relitigate even the non-legal issues regarding their children. When this occurs, parenting coordination may be the only effective intervention to manage and resolve coparenting conflict (Johnston, 1994; Fieldstone & Bohac, 2009; Deutsch, Misca, & Ajoku, 2018).

This article will describe in more depth the characteristics of this small subset of cases where coparenting conflict does not resolve and help family court professionals understand why the parenting coordination intervention is a better fit for these parents than other coparenting interventions or continued litigation. The article will then address how other professionals in the court system can increase the effectiveness of PC’s in their jurisdiction.

II. WHAT IS INTRACTABLE COPARENTING CONFLICT?

Intractable coparenting conflict can be defined as, “protracted family conflict that can ultimately lead to children being harmed, assets dissipated, and ongoing relationships harmed or destroyed.” (Burgess & Burgess, 2015 p. 453). The development of intractable conflict between coparents has a predictable course, as does its management and resolution at different phases. Figure 1 illustrates the escalation of conflict, its impasse (stalemate) and its de-escalation. Parenting coordination has different utility at different phases of intractable conflict. Moving coparents to the right side of the bell curve opens the possibility of peacebuilding and reconciliation.

A. LATENT CONFLICT

The coparents’ feelings of connectedness may have been eroded by long-standing conflicts over differences in a combination of matters such as communication, anger management, parenting style,

Table 1
Litigants Do Not Make Good Coparents

Is there a problem here?	
Litigants	Coparents
<ul style="list-style-type: none"> • Representation – advocacy • Distrust • Sabotage • Win/lose • Chaos • Unilateral action • In the name of the child • Focus on the problem being the other parent • Depleted resources financial, emotional • Dependency on litigation for Dispute resolution 	<ul style="list-style-type: none"> • Parenting/shared responsibility • Trust • Support • Negotiation/compromise • Responsibility • In the best interests of the child • Resources re-allocated to interventions • Training/competency in parenting/coparenting/dispute resolution

substance use, sexual intimacy, work and family balance, division of family responsibilities, or debt and finances.

B. CONFLICT EMERGENCE

The intensity of conflict escalates. Precursors and precipitants of separation and divorce create a context for critical incidents to cause a breach in the relationship and propel co-parents into the legal-adversarial context. Examples of these breaches in the relationship are extra-marital affairs, intimate partner violence, and serious financial or parenting disputes.

C. CONFLICT ESCALATION

Coparents “climb the hill” of intractable conflict with escalating threats, communication cut-off, and the involvement of third parties. Direct engagement/communication is characterized by defensiveness, blame, hostility, threats, and critical commentary. Involvement in the less adversarial court processes such as educational/skills-based programs, collaborative processes, and mediation fail to resolve conflict and the conflict entrenches. Table 1 describes how involvement in adversarial/litigative court processes (hearings, child custody evaluations, trials) reinforces motivations or outcomes, listed on the right side of Table 1, that are antithetical to functional coparenting. Simply stated, litigants do not make good coparents. The longer coparents engage in this litigative context, the more intractable their conflict becomes. The path up the hill of escalated coparenting conflict is not straightforward. Often there are failed peacemaking attempts followed by intensified conflict and de-moralization. Sometimes one parent has reached a point of stalemate and is ready to find an alternative to court involvement while the other has not.

D. STALEMATE (TOP OF THE CURVE)

The escalation of coparenting conflict brings with it, individual turmoil, exorbitant expense, damage to important family relationships, and assorted other types of misery and hurt. Eventually, it becomes obvious, at least to the court and the professionals working with the parents, that continued court involvement is counterproductive. Neither coparent can win the custody war and everyone has had enough. At that point a window of opportunity for de-escalation and peacemaking is available. A parent may reach-out to someone, perhaps even their co-parent, and ask to try some type of coparenting intervention rather than persisting with more of the same court involvement. This

response to the failure of moving past the stalemate is the point in the intractable conflict curve that the coparents, with the encouragement of outside professionals, may agree to appoint a PC. Sometimes coparents progress in de-escalating conflict and peacebuilding without the assistance of a PC.

III. HOW DOES THE PARENTING COORDINATION PROCESS MANAGE INTRACTABLE COPARENTING CONFLICT?

While coparents are operating on the left side of the curve, the PC's goal is to contain, manage, and ideally reduce their level of conflict while supporting adequate child-focused information-sharing and decision-making. Most importantly, parenting coordination can keep these coparents and their children from continued exposure to the litigative processes in the court system. Since the coparents are often not inclined or motivated to de-escalate their conflict, and may be motivated to seek counterproductive engagement, the goals of parenting coordination at the de-escalation stage of intractability are to structurally disengage the coparents (Sullivan, 2008). PCs can be quite effective in creating a parallel model of coparenting that eliminates the opportunity for coparents to engage in a way that maintains or escalates conflict. Family law professionals should understand that a parallel model of coparenting supports healthy child development much the same as a collaborative/cooperative model of coparenting (Kelly, 2007; Sullivan, 2008). Since a parallel, disengaged model of coparenting minimizes the most toxic factor impacting children's developmental outcomes after divorce - interparental conflict - it is the goal in these cases when their engagement continues to generate conflict. Very detailed parenting plans (Fidler, 2012) and the use of online shared parenting internet platforms are tools and structures that support parallel coparenting. The PC, functioning as the interface between coparents, is able to structure, monitor, and enforce how communication between the coparents occurs, ensuring that coparents get child-focused business done - information-sharing, coordination of day-to-day schedules and activities (education, health, extracurricular), and joint decision-making necessary to implement their parenting plan. The PC can move coparents, despite their reluctance, to shift their interaction to the right side of the intractability curve.

The PC's roles and functions, primarily focused on de-escalating conflict, shift when parents move past the hurting/stalemate phase into the right side of the Figure 1 bell curve. The PC, still serving as the structural link between coparents, can establish or maintain the disengaged, parallel model. In some parenting coordination cases, typically after a period of minimal, highly structured more positive engagement, the parenting coordination process becomes a training ground to build functional coparenting engagement termed "peacebuilding" in Figure 1. The PC uses their role to build dispute resolution skills such as negotiation and problem-solving that are characteristic of a more collaborative and cooperative coparenting relationship. Conflicted coparents typically first establish a parallel model of functioning and then potentially, after establishing stability with low-conflict minimal engagement, can build more cooperative engagement. When parenting coordination is effective, the process can build the structure and skills for coparents to progress and become less dependent on the PC's involvement in their relationship.

IV. WHY IS THE PC ROLE EFFECTIVE?

The PC's role has three elements that makes it particularly effective with high-conflict coparents - authority, knowledge, and availability. No other legal or mental health role or process in the family law arena can combine these three elements as effectively as a PC. Judges have the authority to manage cases and resolve disputes, but their availability to provide these supports in a timely manner is often poor (most often the time from filing a motion to have that motion heard is measured in months, not days) and the specialized psychological and case specific knowledge of the issues is

quite variable, depending on the judge. Mediators and counselors working with highly conflicted coparents have the availability and knowledge to address issues but not the authority, if their efforts to resolve disputes fail. Only the PC has the specialized knowledge, availability, and authority to be effective with the subset of cases that other processes are ineffective in managing.

V. WHAT CAN BE DONE WHEN A COPARENT WILL NOT AGREE TO THE APPOINTMENT OF A PC?

In some jurisdictions, the appointment of a PC requires the consent of both coparents (AFCC Guidelines for Parenting Coordination, 2019; Dale, Bomrad, & Jones, 2020) because it includes a delegation of the court's authority in the case to the PC. Although it is often the case that after some negative experience of litigation post-decree described earlier coparents agree to appoint a PC, sometimes one or both are not agreeable. When the court (or attorneys) has a parent who will not agree to a PC appointment, two approaches are possible to deal with this opposition. First, for example, the order for a PC with only recommending authority to the court might have a court review procedure, which states that a recommendation becomes a binding order if neither coparent objects in 5 days in writing and if they do object the procedure should then provide for an immediate court hearing on the issue.

Another approach to addressing a co-parent's resistance to appointing a PC is for the judge and/or legal counsel to suggest that the alternative to continued disputes between coparents is that the court could possibly assign decision-making for all or some of the subject areas exclusively to one of the coparents. This solution is a logical consequence to parents who cannot make joint decisions, such as whether the child should have counseling or a particular medical procedure, and will also not agree to a PC who could resolve the dispute. Without a resolution process, a court may choose to grant sole custody or sole legal decision-making as the only way decisions can be made for the child. Most judges would prefer to name one parent as the deciding parent rather than be tasked to enter orders for each individual decision. The parents can be encouraged to agree to a PC because the parenting coordination process can minimize and ideally eliminate court and attorney active involvement and PC fees are typically less than one attorney's fees.

VI. WHEN SHOULD A PC BE APPOINTED?

Parenting coordination is a dispute resolution process that is typically implemented after a parenting plan has been established. PCs are usually experienced mental health professionals (MHPs), legal professionals (family law attorney, retired judge), or family mediators appointed by the court to assist coparents in cases where coparenting conflict is assessed to be intractable. The PC role is not typically intended to be used for the development of the parenting plan, but for the implementation of the parenting plan (PC Guideline VII.H). The exception to a post-decree appointment is when the coparents have an interim or temporary parenting plan, while processes are occurring (e.g., a child custody evaluation) in order to establish a more permanent parenting plan. A PC appointment may also be particularly useful when a temporary parenting plan is in place and there is an expectation that if a coparent addresses individual issues that are restricting their parenting involvement their parenting involvement will increase.

Similarly, the PC can be useful in developing and modifying parenting plans when a coparent's involvement is restricted because of child-based developmental reasons (i.e. the child is quite young or the child has special needs that have restricted a coparent's involvement). Common to many step-up parenting plans (Kline-Pruett, Deutsch, & Drozd, 2016) is an expectation that with time, or successful interventions, a coparent's time with the children may increase. Having a PC manage this process can have considerable benefits to judicial case management (Sullivan, 2019).

VII. WHY NOT HAVE PCS INVOLVED PRIOR TO A PARENTING PLAN BEING ESTABLISHED?

Deutsch et al. (2018) noted that judges can have an expectation that PCs should both create and modify parenting plans. There can be several problems with the court delegating its authority to a PC to address disputes that occur in the development of a parenting plan, rather than for its implementation. Addressing significant disputes between coparents, such as relocation issues, school placement, disputes about legal custody designations (sole or joint) and requests by one or both coparents to significantly limit the other coparent's parenting time are not the domain of the PC role. When judicial decisions or settlement processes address these more significant issues, the judge should make sure there is a determination of all components of the parenting plan, including holiday allocation, supportive mental health interventions, etc. Judges should avoid "punting" disputed parenting plan issues (timeshare, school placement, vacation, and holiday periods, etc.) into the parenting coordination process as it begins. It is best practice to hand the PC a detailed, comprehensive parenting plan to implement, as it is more difficult for the PC to develop and maintain a working alliance with coparents when the PC has to make a decision about significant disputed parenting plan issues while attempting to build trust and confidence with these already difficult clients. Similarly, if significant assessment/evaluation is needed to provide recommendations or decisions about disputed issues, this creates a dual role for the PC, who would be acting as both the evidence gatherer and the trier of fact (Parenting Coordination Guideline IV, 2019). Sherril Hayes (2010) has characterized the PC role as "more a cop than a detective," defining the role as more walking the beat, for example managing conflict, resolving day-to-day disputes between co-parents, than engaging in in-depth investigations of substantial issues that may present in these cases. This distinction is also why the scope of authority for PCs in cases precludes issues that require substantial investigation and evidence gathering, such as relocation of a coparent, some school placement disputes, requests to substantially modify parenting time,³ and any change in the designation of legal custody. When these issues are presented to the PC, they should refer coparents back to the court to resolve them.

VIII. WHAT ARE PC REFERRAL CONSIDERATIONS?

Referring a case to a PC should focus on two sets of considerations, those that involve the characteristics of the case and those that involve the characteristics of the PC. In addition to the case considerations described above where parenting coordination could be instrumental in structuring and assisting high conflict coparents to implement a parallel parenting model through disengagement, there are other types of cases that are particularly well-suited to the parenting coordination process. These are shared parenting situations that do not have a permanent parenting plan in place, most commonly with very young children, where restrictions in one coparent's time are expected to ease as the child grows. There are many examples of evidence-informed developmentally appropriate parenting plans for children between ages 0–6 that recommend incremental increases in the non-primary parent's timeshare until a permanent schedule, sometimes equal parenting time, is reached. Other examples of temporary or gradually implemented parenting plans requiring step-ups in parenting time for the non-primary parent are cases where a coparent's timeshare is restricted (sometimes supervised) because of issues that have been found to negatively impact their parenting and coparenting. These include issues such as substance use disorders, intimate partner violence (IPV), and mental health concerns. Interventions are put into place (voluntarily or by court order) with the hope that resulting parenting issues resolve sufficiently to increase that coparent's time with their children. The oversight and support of these "step-up" plans (Kline-Pruett et al., 2016) require several case management elements that are best addressed by a PC. They include: (1) monitoring compliance with and effectiveness of the required interventions; (2) coordinating and supporting the work of professionals providing the interventions, particularly important when a team approach is

in place (Greenberg & Sullivan, 2012; Sullivan, 2019); (3) resolving disputes about the implementation of a pre-determined step-up schedule; and (4) having a direct linkage to the court's authority if that is necessary.

A growing type of high conflict case are those that present with parent-child contact problems (PCCPs) that may be particularly well-suited for the parenting coordination process (Fidler, Deutsch, & Polak, 2019). When these problems have resulted in a child's resistance or refusal to contact with a coparent, and the court has determined or the coparents have agreed that it is in the child's best interests that interventions be put into place to resolve the PCCP, the four elements that combine case management and dispute resolution described above are often essential to effective intervention.

In terms of a PC's characteristics, parenting coordination is one of the most challenging and complex roles in the family courts. Specialized experience and training in both legal and psychological domains are required for minimum competency (AFCC Guidelines for Parenting Coordination: Guideline I). PCs who do not have this required competency should not be appointed. As a supplement to the AFCC Guidelines for Parenting Coordination (2019), there are recommendations for comprehensive training of PCs that cover the domains of competence to assist practitioners and the potential referral sources to evaluate a particular PC's level of competence (AFCC Guidelines for Parenting Coordination 2019: Appendix A). It is therefore critical to the effectiveness of the PC role that jurisdictions develop a system to evaluate minimal PC competence prior to referral.

In addition, some cases are better suited to certain PC practice styles. Cases with long-standing disputes will require a stronger hand and a more decisive nature which results in faster decision-making. Some families simply need to see a result, without a long, involved process to be able to move on. Other cases, where the parents are more recently separated and have yet to learn how to coparent and communicate, will benefit from a slower, more educational or skill-building approach to allow the parents to transition into their own decision-making without outside assistance. A relevant distinction may be that one case will fit better with a legal professional who may have more specialized skill in court-related dispute resolution procedures, while another case may be a better fit for a mental health professional who has more specialized skill in managing a team of mental health professionals dealing with an issue such as a parent-child contact problem (Sullivan, 2019). Finally, characteristics such as gender, race, ethnicity, culture, language fluency, office location, and affordability may be relevant to the PC fit.

IX. WHAT TYPES OF CASES MAY NOT BE APPROPRIATE FOR A PC APPOINTMENT?

The AFCC Guidelines for Parenting Coordination state:

“The dispute resolution process central to a PC's role may be inappropriate and potentially misused by perpetrators of intimate partner violence (IPV), who have exhibited or are continuing to exhibit patterns of violence, threat, intimidation, and coercive control over their coparent. Accordingly, each jurisdiction should have in place a clearly delineated process to develop specialized parenting coordination protocols, screening, procedures, and training in cases involving IPV” (AFCC Guidelines for Parenting Coordination 2019, p.4).”

Given the potential for the parenting coordination process to provide a context for continued perpetration of coercive and controlling abuse in the coparenting relationship, these cases may be better managed in the formal court process. However, if the PC has the specialized training necessary, and the process can be structured to preclude further perpetration of abuse, parenting coordination may still be a good fit.

Often, cases that are not appropriate for parenting coordination are only identified as the PC actually works on the case. When one or both coparents are not able to respect the authority of the

PC, by continued non-compliance (e.g., not following recommendations or not paying fees) or repeated objections made to the court about decisions or grievances about the PC's conduct, the case may require that the court order sanctions to hopefully gain adequate compliance with the parenting coordination process. When complaints may be spurious or even a tactic to force resignation of the PC, the case should be managed directly by the court.

X. COURT ORDERS AND RULES GOVERNING PARENTING COORDINATION

The formal authority for a parenting coordination appointment is derived from court orders, statutes, and rules, including guidelines which proscribe what a PC can do and how the process is structured. Implementation procedures include having a court order, agreement of the parties, statutory authority granted by legislation, local rule, or a combination of these. At this juncture, jurisdictions vary widely in establishing authority for the appointment of PCs by either statute, state rule, or even rules of individual counties or districts (Dale et al., 2020). The process is most effective when standardized with as much uniformity as possible across jurisdictions as to scope of decisions and how the process will proceed. That need for uniformity is a driving factor behind the AFCC Guidelines for Parenting Coordination.

The standardization of appointment orders provides a framework for the process for the PC, the parties, and the court. To the extent orders of appointment can be standardized across jurisdictions, the parenting coordination process will be enhanced and family court professionals and parties will be better educated on what to expect from the process.

XI. THE COURT APPOINTMENT ORDER MUST BE CLEAR, DETAILED AND COMPREHENSIVE

Clear court orders are essential for successful parenting coordination. Orders should, ideally, be driven by statute and rule, which outline the process and authority for parenting coordination. Where no statute or rule defines the role and scope in a given jurisdiction, the appointment order will need to cover what would otherwise be covered by statute.

The AFCC Guidelines for Parenting Coordination 2019, specifically Guidelines VI(a) and (b), establish that court orders should include the essential elements necessary for parenting coordination work including the term of service, purpose of the role, scope of authority, the PC's access to information, limits of confidentiality, procedures for the process and for decision-making, how reports will be submitted to the court, the extent of judicial review, fees, a grievance process, and a process for the termination of parenting coordination.

A standardized order of appointment or Consent Agreement should start with at least the following specifics:

IT IS ORDERED that [NAME, ADDRESS, CONTACT INFORMATION] is appointed as the Parenting Coordinator in this case for a term of [LENGTH OF TERM] pursuant to [STATUTORY OR RULE AUTHORITY]. The Parenting Coordinator has the authority and responsibility as follows: [Specific list of duties and issues that can be covered].

Jurisdictions vary widely in the scope of authority granted to a PC. The appointment order (or, in some jurisdictions such as California, the consent agreement) must include a list of specific issues the PC may consider and make decisions about and the basis for the PC's authority. In jurisdictions that have outlined the authority by statute or rule, reference to that statute or rule will suffice in the appointment order.

The appointment order must specify the PC's broad authority to gather information such as:
IT IS ORDERED that the Parenting Coordinator has the authority to:

- A. interview the child/all children;*
 - B. interview all members of the immediate or extended families and households of both parents;*
 - C. interview and request the participation of any and all persons whom the Parenting Coordinator deems to have relevant information or to be useful participants in the process, including but not limited to doctors, therapists, school personnel, and child-care providers;*
 - D. recommend that the court order the parents or the child to participate in ancillary services including but not limited to physical or psychological examinations or assessments, counseling, and alcohol or drug monitoring and testing; and*
 - E. make findings and recommendations for a court order on any other related issue.*
- The parenting coordinator shall have access to:*
- (i) all teacher reports, and school and medical records of the children, and*
 - (ii) all psychological testing or evaluations concerning the children and parents.*
- FURTHER ORDERED that the parents execute the appropriate releases in order for the Parenting Coordinator to obtain the release of documents the Parenting Coordinator deems necessary to the performance of the Parenting Coordinator's services.*

XII. SCOPE: WHAT DECISIONS THE PARENTING COORDINATOR CAN MAKE

Guideline XI(B) “Scope of Decision-Making” is an extensive but not exhaustive list of specific areas of a parenting plan for which parenting coordination oversight can be utilized. The use of the term “minor” to describe decisions in Guideline XI(b)(1) is not defined but can be interpreted to mean parenting time adjustments or changes which do not increase or decrease parenting time enough to warrant a change in child support obligations. Generally, modifications of a day or two in time, and modifications of exchange time, would be “minor” and well within a PC’s authority.

The scope of a PC’s role is a delicate balance between enough authority to enforce and implement existing court orders without encroaching on judicial functions and authority, while also respecting individual parent’s rights to make day to day decisions for their children (Montiel, 2015). The appointment order must not only outline what decisions the PC can make but must also specify what the court will do with those decisions, once made. Jurisdictions vary in referring to the PC’s decisions as recommendations, awards, orders, or determinations.

XIII. CONFIDENTIALITY

Determination of whether or not parenting coordination is confidential must be established at the outset of the appointment. Where there is no confidentiality in most jurisdictions, the PC’s records and communications with a coparent, children, or with any other person contacted in the course of the PC’s work may be subject to discovery or court testimony. This lack of confidentiality should be made clear in the appointment order. Since a PC is most often either a lawyer, licensed therapist, or family mediator, whose roles for which confidentiality and privilege are known, express explanations must be made to the client to differentiate the PC role. The lack of confidentiality is necessary to allow the PC to make findings and report all relevant information to the court when making a decision or recommendation, and to preserve due process so that both coparents in the process are given access to the same information considered by the PC. In some jurisdictions where parenting coordination is confidential, other procedures may be established to allow the PC to communicate with the court.

XIV. FORM OF REPORTS TO THE COURT

The Order of Appointment may require that the PC’s recommendation or decision on an issue is submitted in writing and filed with the court with a copy provided to each party. Informal or

emailed reports may not have the specificity and clarity necessary for enforceable and effective orders. Ideally, the PC's form of report will include at least the following sections, in a standardized form used in the jurisdiction:

- Children involved (names and ages, appropriately redacted for privacy, and notations about any special needs).
- Issues. An outline of the specific issues addressed in the report and a statement of issues still pending.
- Current Orders in Effect. A statement of current court orders and parenting plans and the provisions of each which are relevant to the issues being addressed.
- Each Coparent's Position. A statement of what each parent proposes for the resolution of each issue and response to the other coparent's position.
- Findings. Statements of the information obtained by the PC in reviewing and considering the issues and how the PC's ultimate determinations were reached.
- Recommendations (Decisions). How the PC proposes (or orders) that each issue is resolved.

XV. THE COURT'S ROLE ONCE A PC DECISION HAS BEEN MADE

The court's review process for a parenting coordination report is crucial for success of the process. As stated, enormous variations exist between jurisdictions in what a PC can do. Regardless of the PC's ultimate authority to make recommendations, final orders, or referrals for services, the court's support and implementation of the PC's actions are essential. Upon receipt of a PC report or recommendation, the court should have an expedited process for entering interim or final orders or providing the parties with an opportunity to object to the PC's recommendations by holding a hearing.

Due process requires that the court have some process of review, which may include setting a hearing, before entering new orders. The requirement of judicial review applies except where the parties have agreed to a parenting coordination process which is statutorily defined as binding arbitration (e.g., Arizona).⁴ Depending on the jurisdiction, a court may automatically set a hearing on the PC's recommendations or may set a time frame during which either party may file an objection to the recommendations and be granted an evidentiary hearing. The standard of the court's review may be *de novo*, in which the court essentially starts at the beginning and hears all evidence on the issue as if for the first time, or the court's review can be "abuse of discretion," a higher standard in which the party opposing the parenting coordination result has the burden to show why that result is incorrect.

The failure to file an objection and request a hearing within the time frame specified in the appointment order usually results in the entry of the recommendations as an interim or final court order.⁵ The court can on its own accord set a hearing on a PC's recommendations, if the court wants more information about the proposed orders.

Depending on jurisdictional variations, judges may accept a PC's recommendation in full, accept a part of the recommendation and make modifications to it, or entirely reject a PC's recommendation. In some jurisdictions, a PC recommendation becomes a binding decision in the nature of arbitration and a judge can overturn or change that decision only upon a finding that the PC exceeded their scope in making the decision.

XVI. GRIEVANCE PROCEDURES

Any jurisdiction utilizing parenting coordination must establish procedures for a party to file grievances about the PC or the process. Complaints about unethical or unprofessional conduct of a PC may be brought to the attention of the professional's licensing body or to the court. These complaints may allege that the PC lacked competence (Guideline I), violated impartiality (Guideline II),

had an undisclosed conflict of interest (Guideline III), or engaged in multiple roles (Guideline IV). Typically, these complaints accompany an objection to a particular decision the PC has made and must be heard by the court before considering entering the recommended decision. As noted above, a co-parent's objection to the PC's recommendation, stating that a wrong decision has been made is also subject to court review so long as the aggrieved party files a request for an evidentiary hearing within any mandated time frame. A controversial issue is whether the PC can continue to work in a case when a licensing complaint has been filed against them. This is particularly true when it is clear that the party has filed the complaint as a tactic to remove the PC from the case. Though it is clear that ongoing work is not appropriate if the PC cannot continue to act in an impartial manner, it is less clear if continuing work creates a multiple role (defendant in a licensing board action and PC with a party) as the PC's professional risk increases significantly.

XVII. PARENTING COORDINATION FEES

The fee structure must be established at the outset of the parenting coordination process for the protection of the client and the PC. The PC's hourly rates are typically set by the individual PC and should be made known to the parties, whenever possible, before the appointment order is signed. In some jurisdictions, the parties must explicitly agree to the PC's hourly rates (or at least a range of rates) before the Order of Appointment can be entered. Fees reflect each professional's hourly rate for legal or court-related work as well as that individual's expertise and qualifications. Fees will usually be charged for all of the PC's work, including meetings, phone calls, document review, court appearances, emails, consultation with other professionals (therapists, evaluators) and with third parties (teachers, other family members, tutors, coaches, physicians), and preparation of reports and recommendations.

Each party's respective responsibility for the allocation of fees must also be explicitly ordered by the court, not determined by the PC. Here is an example of language specifying fee allocation:

IT IS FURTHER ORDERED that [FATHER/ MOTHER] shall assume and pay 50% of the Parenting Coordinator's fees and [FATHER/ MOTHER] shall assume and pay 50% of the Parenting Coordinator's fees. IT IS FURTHER ORDERED that the parents pay the Parenting Coordinator in accordance with the Parenting Coordinator's fee agreement.

This form of appointment order regarding fees should require that the individual PC provide their own form of Fee Agreement (contract) which explains the fee structure in detail. The court order defines each parent's percentage of the total fees. Whether or not the PC requires a retainer and/or an advance deposit to be held depends on the individual, and a specific Fee Agreement will explain all aspects of the billing process to the client. PCs should diligently itemize all work performed and send written bills at least monthly to keep the client fully advised of all work done on the case. The PC should not allow the payment of their fees to become delinquent and they should suspend services until such time as fees are brought current and/or the retainer is replenished. Working with one or both coparents owing fees may place the PC in a dual role with that coparent and impair their perceived impartiality.

XVIII. SETTING UP THE PC PROCESS TO SUCCEED: PITFALLS, LIMITATIONS AND STRUCTURES

A. THE PC DOES NOT CREATE THE ORIGINAL PARENTING PLAN

The PC does not, without express court order, create parenting plans, nor does the PC work with parents to help create it. The latter process would generally be described as mediation.⁶ The Overview to the AFCC Guidelines for Parenting Coordination (2019) provides a summary of PC duties,

including reference to assisting coparents engaged in high conflict coparenting to implement their parenting plan. Implementation is not creation or substantial revision (e.g., addressing a relocation request by a parent). The PC will explain, interpret, monitor, and enforce that plan, while making minor changes and tweaks necessary to make the already-adopted plan work.

B. WHAT IF THE COURT/PARTIES NEED HELP TO CREATE A PARENTING PLAN AND OTHER METHODS OF DISPUTE RESOLUTION HAVE NOT BEEN SUCCESSFUL? ARE THERE CIRCUMSTANCES WHERE A PC CAN BE APPOINTED TO CREATE THE PARENTING PLAN?

The AFCC Guidelines for Parenting Coordination 2019 anticipate there may be circumstances when a PC is expected to create the parenting plan with the parties. Guideline VII(H) states: *If authorized by a court order or consent agreement, a parenting coordinator may assist coparents in developing or revising a parenting plan.*

If the court's intent is that the PC work with the parents to create or substantially modify a parenting plan, the court order must expressly state that intent and refer to statutory or rule authority for that function. However, in many jurisdictions, reference to the parenting coordination statute or rule will still not be enough to confer the appointee's ability to create a parenting plan.⁷ In the event an appointment order or court order instructs a PC to take actions outside of his authority, the PC must apply to the court for further instructions or decline the appointment.

C. THE PC MUST HAVE COMPLETE ACCESS TO DOCUMENTS AND INFORMATION

Guideline VII(A) outlines the initial process and items the PC needs to perform the work:

1. Intake Process

A PC serves a screening and information gathering function. A PC shall screen clients referred for services for suitability of the process. A PC should review a custody evaluation, interim or final court orders, information from other collateral sources, intimate partner violence protective orders, any other applicable cases involving criminal assault, intimate partner violence, child abuse, and other relevant records such as educational, medical, mental health, therapy, and treatment records, and then analyze the impasses and issues as brought forth by coparents.

Initially, the PC must have access to at least the following regarding a case in order to be helpful:

- Initial parenting plan
- Any court-ordered modifications to the parenting plan
- Any evaluations (limited or comprehensive) done for the family or an individual

Ideally, the initial court order of appointment designates which party or counsel will supply these items to the PC and include a deadline for submission.

The following additional items may be necessary for the PC to review, depending on the issues in a particular case:

- Substance testing results
- Child's medical and counseling records
- Parents' medical and counseling records
- School records
- Criminal records, police reports, Child Services records

XIX. COMMUNICATION AND RECORD KEEPING

Guideline X may be the single most important guideline when examining the PC's relationship with others, including parents, counsel, and the court. Guideline X(A) allows *ex parte* contact with either the co-parent or the attorney or both. The PC must be familiar with local laws to determine whether this guideline regarding *ex parte* communication applies in their individual jurisdiction. In many jurisdictions (e.g., Arizona), *ex parte* contact between the PC and a party's attorney is expressly prohibited by the Order of Appointment. Other jurisdictions' statutes, rules, or court orders may or may not include similar prohibitions. PC *ex parte* communication with the court will be subject to the specific appointment order, and *ex parte* contact with the court may be prohibited by the terms of that order.

As part of both their case management and dispute resolution function, the PC must have access to all professionals involved with the family, including counselors, medical professionals, and school, and extracurricular personnel. Working in collaboration with mental health professionals who are frequently providing services to family members is an essential PC role. Extended family members may have valuable information about the children, or the family dynamics and their involvement may be critical to effective parenting coordination interventions. For this reason, access to significant others, step-family, and grandparents is often essential. While the PC may want to interview step-siblings and other members of a family's household, caution should be exercised in obtaining valid consents, as the parent of a step-sibling may not give consent for the PC to speak with their children.

The PC appointment order should generally order both coparents to execute authorizations necessary for the PC to obtain medical, psychological, and educational records. Issues of medical privacy, privilege and HIPAA concerns should generally be dealt with by the court or in the appointment order, and disputes regarding obtaining those records or claims of privilege must be immediately relayed back to the court for resolution.

Guideline X and best practices both call for either individual or joint initial meetings with the coparents. Whether the initial or subsequent meetings are joint or separate depends on many factors, including the PC's preference, the preference of both coparents; what office procedures are available for the safety of all parties; whether intimate partner violence screening has been done and the results; the existence of protective or harassment orders; and whether alternative forms of communication, including electronic meetings, can be offered and be effective. The PC may find that obtaining background information about the case is made easier by individual initial meetings, but joint meetings thereafter are more efficient to discuss specific details and work toward potential solutions.

The PC should maintain clear, specific, and thorough records documenting all time spent on the case and all communications with each party and with collaterals. Agreements of the parties and each party's position on pending issues should be documented in the file to allow the court to review all information in its review and/or grievance processes. In jurisdictions where the PC's file is not confidential and may be subpoenaed, the parameters for subpoena of the file (including copying and administrative costs) should be covered in the appointment order/ Service Agreement at the inception of each case.

A. PCS COLLABORATION WITH ATTORNEYS

To be successful, the parenting coordination process needs the support not only of the coparents but from the court and each parent's attorney, if any. While the attorney's uppermost concern is always the attorney's duty to the client, the PC and attorneys both share a commitment to the best interests of the children. Attorneys should be able to rely on the PC to assist their clients and compile relevant information that the attorneys (and the court) may not otherwise have access to, absent the PC's assistance (Higuchi & Lally, 2014). The information compiled by the PC may not be

confidential, and where not confidential, the court's access to that additional information should inform more helpful and detailed court orders.

Attorneys and the PC should, early in the case, confer and clarify goals for parenting coordination. Generally, the PC goals will involve improvement but not perfection, in the parents' coparenting. Some cases will call for the minimization of communication between the coparents (disengagement) rather than direct, frequent and detailed communication. Attorneys can enhance the process by explaining disengagement and parallel parenting concepts to their clients and managing the coparents' expectations. The PC can also communicate to the attorneys that, at least in cases involving two competent parents, parental autonomy is a goal rather than court or the other coparent's micro-management of parenting decisions.

Exchange of information between attorneys and the PC is important, both to ensure transparency to the process and to avoid conflicting and confusing orders. Attorneys often have the more current and relevant information and more access to new court filings, court orders, and court scheduling than the PC can obtain. Likewise, the PC will often be aware of information the attorneys might not otherwise have. Giving the attorneys advance notice of new facts or a forthcoming recommendation will enhance trust and respect between the professions. Attorneys who are properly advised can assist in managing the clients and preparing them for changes that otherwise might cause extreme behaviors. PCs can also be of assistance in "coordinating" disagreements between attorneys which otherwise could complicate litigation, such as when depositions or hearings can be postponed to reduce conflict while other measures are utilized first.

Attorneys sometimes mistake a PC's unwillingness to engage in *ex parte* communication as an unwillingness to speak with both attorneys in a conference call. Most PCs, however, welcome joint conference calls with counsel to discuss solutions. Similarly, PCs sometimes mistake an attorney's request for communication as an attempt to interfere in the parenting coordination process, and this likewise would be an unfortunate error. Professionals in all areas of the dispute need to model respect and collaboration in their own interdisciplinary communication as rigorously as they encourage their clients to communicate better as coparents.

Counsel for each coparent should be willing to participate in joint calls with the PC when requested. A helpful PC/attorney call at the commencement of parenting coordination work will include identification of all court orders and documents important to the case (assessments, final parenting plans, modifications, and evaluations); discussion of any IPV or abuse issues, and exchange of any current orders of protection; discussion of the PC fee agreement and billing processes; specific scope and authority issues to identify client and attorney goals and ensure the goals coordinate with the PC's authority; guidelines for how the PC will communicate with the parents and the lawyers, including discussion of *ex parte* communication; and exchange of any relevant upcoming dates including court dates, vacation schedules and the like (Fidler & Greenberg, 2019).

B. JUDICIAL SUPPORT OF PARENTING COORDINATION

Courts must be cautious in not requesting the PC act in roles that exceed their scope of authority. While it is not uncommon for a judge to want the advice or recommendations of a skilled PC about appropriate legal decision-making or parenting time orders, the PC rarely is vested with authority to give such a recommendation. The PC can assist the court with these decisions without violating the scope of authority, by providing specific data points on these issues within the scope of their role without rendering an ultimate opinion or recommendation.

Judges can support the parenting coordination process by acting timely when a PC report is received, as outlined above. Judicial processing and entering of court orders on a timely basis is crucial to support the process and the coparents. When the coparents become aware that a PC's report, when filed with the court, becomes a court order on an expedited basis, coparenting can be enhanced. Coparents involved in litigation for years have become used to waiting weeks and months for decisions from the court. When the more streamlined and expedited parenting

coordination process starts, these coparents see real progress as their issues are resolved in a timely (and less expensive) manner. When a PC report is made a court order within a matter of days from when the parties brought the issue to the PC (subject to objection or review provisions that vary by jurisdiction), the process is given credibility.

Judges can further assist the parenting coordination process by promptly responding to a PC's requests for the setting of a status/case management conference, as the PC is in a unique position to identify when judicial intervention is necessary.

Judicial acceptance of the parenting coordination role in their jurisdiction is crucial for the continued support of the process. Generally, the more familiar a judge becomes with the process, the more the process is appreciated. Parenting coordination applied to a case of "frequent fliers," the parents who return for multiple post-judgment court orders the most often, can drastically reduce court time spent on those cases. The effect is cyclical: the more a coparent is involved with the actual resolution of disputes about parenting plan implementation and feels heard in the process, the more likely that coparent is to accept and abide by the result, even if that coparent did not "win." Parenting coordination allows the coparents far more input into the final result than a single court hearing, which usually provides very limited time spent in front of a judge.

Judicial rotations mean that constant, ongoing judicial training on parenting coordination is necessary. Judges unfamiliar with family court, coming off rotations on criminal or civil cases, likely have no knowledge of what a PC can provide to a case. While the use of Special Masters is widely known (and generally accepted) by the judiciary, parenting coordination is a lesser-known subset of the Special Master process which has long been used by federal and state courts to facilitate specific functions on the court's behalf. Thorough training of family court judges is necessary to fully explain the process and gain buy-in from new family court judges.

C. SUPPORT OF THE COMMUNITY AND OTHER PROFESSIONALS

The PC will need a wide range of community resources to draw upon, including referral sources for education, counseling, and training. For this reason, experienced professionals will be in high demand as PCs, as it truly takes a village to provide parenting coordination services to families.

Parenting coordination training is consistently necessary to support the process, as every jurisdiction needs a pool of competent PCs (AFCC Guidelines for Parenting Coordination 2019, Appendix A, 2019). The larger the competent PC pool, the more the court, attorneys, and coparents can consider each prospective PC's strengths for a particular case. While national parenting coordination trainings are routinely scheduled by AFCC and other organizations, many jurisdictions remain underserved with local, easily accessible, and affordable parenting coordination training. Local court systems and localized family court groups can enhance the pool of available PCs by offering in-house court trainings at reduced or no cost. Parenting coordination peer consultation groups are essential for ongoing support, training and mentoring of PCs by more experienced professionals, as referenced in the AFCC Guidelines for Parenting Coordination 2019, Guideline I(H) (2019).

XX. CONCLUSION

Parenting coordination is perhaps the most significant area of interdisciplinary collaboration between the courts, mental health providers, attorneys, and family mediators coming together for the benefit of the children of the most highly litigious parents. It is a challenging, highly specialized role in the family justice system to assist those in family court with coparenting disputes that return repeatedly for court intervention.

The positive impact of parenting coordination on court outcomes and on reducing interparental conflict and even child behaviors has emerged from research (Deutsch et al., 2018; Fieldstone

et al., 2011; Johnston, 1994), but some conclusions are limited because of small sample size, lack of control or comparison groups, or participants' attrition at the post-test stage.

Support for parenting coordination continues to come from the use of AFCC Guidelines for Parenting Coordination, and other organizations, and from court systems and attorneys, but additional support from the bench is necessary to improve the effectiveness and availability of parenting coordination to high conflict coparents. Since the original Guidelines for Parenting Coordination were published by AFCC in 2005, parenting coordination has gained national and international acceptance, but much work remains to be done to make this dispute resolution process more affordable, practical, and available to parents. Parenting coordination will be most effectively used by the courts when there is a greater understanding of the benefits and limitations of the process, and when it is conducted by well-trained PCs with well-defined authority, procedures, and relationships with the court. The AFCC Guidelines for Parenting Coordination, as revised in 2019, utilize the most current parenting coordination research available and provide additional guidance for effective use and continued successful development of the process.

ENDNOTES

¹The term "coparent" refers to any legal guardians who share parenting time and decision-making of a children.

²Some jurisdictions authorize the appointment of non-confidential mediation which permits the mediator to provide non-binding recommendations to the court if parents do not reach agreement. This "recommending mediation" often results in acceptance of those recommendations by both parents and avoids further court involvement.

³Typical appointment orders limit the PC's ability to modify the parenting time no more than to 1–2 overnights a month.

⁴Ariz. Rules of Fam. Law Proc. 74(j)(1).

⁵*Id.* at 74(i)(2)(a).

⁶The distinction between family mediation and the parenting coordination process is discussed in the Definitions to the Guidelines. One immediate distinction is that mediation is generally, by rule and statute, a confidential process, and parenting coordination is not.

⁷In Arizona, for example, the parenting coordination rule does not authorize a parenting coordinator to create a parenting plan, and no other statutory or rule authority allows a non-judicial officer to create a plan. Rule 72 of the Arizona Rules of Civil Procedure provides that a Special Master who, by agreement of the parties, may enter other types of orders, is not permitted to enter any recommendations concerning parenting time or legal decision-making.

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Matthew Sullivan, Ph.D. is President of the Association of Family and Conciliation Courts and has been on the Task Forces which developed the AFCC Parenting Coordination Guidelines in 2000 and the 2019 revisions of those Guidelines.

Annette Burns, J.D. is an attorney and has practiced parenting coordination for the past sixteen years in Maricopa County, Arizona. She is a past President of the Association of Family and Conciliation Courts and a Fellow of the American Academy of Matrimonial Lawyers.