Parenting Coordination:

The only child-focused process in parental separation and divorce that empowers parents to parent

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Recently, the Florida Legislature passed legislation which did away with the words, "custody," "primary residential responsibility," "secondary residential responsibility," and other adversarial terms. New terms like "parenting plan" and "time-sharing" are now the proper legal terms to use when discussing children's time with the parents and division of responsibilities between the parents regarding their children and their specific needs. However, when parents divorce and families reorganize, they usually view the divorce process through their own eyes and sometimes the children's specific needs and issues are forgotten.

Many family law practitioners and judges are concerned that the adversarial process increases the amount of damage to a family in need of healing. For that reason, alternative dispute resolution options remain highly desirable alternatives. Mediation has come a long way to be of great assistance to the parties in resolving divorce issues, ranging from equitable distribution, spousal support, children's issues, attorney's fees and costs, and every other issue imaginable. However, mediation again stresses the parent's point of view and is not necessarily tailored to allowing for recommendations and parental education intended to address the specific children's needs.

Parenting coordination is an alternate dispute resolution option that focuses on the children's point of view, not the parents', and is more facilitative then mediation. Also, parent coordination is distinct from therapy, which seeks to diagnose and treat problematic behavior. The international organization Association of Family and Conciliation Courts (AFCC) convened a multidisciplinary committee in 2005 which defined parenting coordination as: "a child focused alternative dispute resolutions process in which a mental health or legal professional with mediation training and experience assists high conflict parents to implement their parenting plan by facilitating the resolutions of their disputes in a timely manner, educating parents about children's needs and with prior approval of the parties and/or the court, making decisions within the scope of the order of appointment."

When parents engage the services of a parenting coordinator they have access to an expert with whom they can consult about how to resolve disputes more effectively, how to change ineffective communication patterns, how to plan for special needs of children, understanding the developmental needs of their children and how to honor the child enough to provide an atmosphere of peace during child exchange. If they both agree, parents can have access to a private decision maker trained in dispute resolution who is specifically looking at the issues from the child's perspective, available faster than a hearing on a judge's calendar and who can make a decision on non-substantive issues such as how a birthday party will be organized or in what extra curricular activities the children will participate ~~in~~. As recognized by the licensing board under Florida Statutes Chapter 491 and the Committee for the Dispute Resolution Center of Florida, parenting coordination is distinct from both mediation and mental health counseling. This distinct process can give parents an effective and efficient tool in deciding and implementing what is in their children's best interests. Some states have enacted legislation allowing the Court to appoint a parenting coordinator without the parties' consent in cases where the parents demonstrate a propensity for litigiousness that is detrimental to children.

Since parenting coordination is a relatively new process, there are many issues with the process that either have not been specifically addressed or that need to be addressed by either legislation or the parties prior to parenting coordination beginning. Legislation passed in other states has addressed confidentiality of the process (Should the parenting coordinator be allowed to come to Court and advise the Court of what has happened in the parenting coordination sessions?), quasi -judicial immunity for the coordinator (Can a parent unhappy with a parenting coordinator seek legal action against the parenting coordinator for negligence or some other action?), decision-making authority (Should the parenting coordinator be allowed to decide issues if the parties can not agree, and if so, what types of issues ranging from birthday parties to changing time sharing arrangements?), qualifications (What qualifications should a parenting coordinator have and who should decide if a parenting coordinator is qualified?), and circumstances under which parties can be ordered to participation in the process without their consent (What if one party says they do not agree to parenting coordination and is there ever a good reason not to participate in parenting coordination?).

As can be expected, the above present only a few of the questions and issues that arise in parenting coordination. While legislation may be useful in establishing some basic rules regarding parenting coordination, most if not all power should be left with the parties to establish the parenting coordination rules at the beginning

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of the process. Even with legislation establishing ground rules for parenting coordination, there should still be flexibility to allow the parties to shape parenting coordination in what will best work for them, and more importantly, for their children. Furthermore, parents should be allowed the freedom to agree to a parenting coordinator whose qualifications they feel they can trust, while having the benefits of the guidance of a statutory definition for competence.

As we look forward to legislation that will define this role in Florida to offer increased protections to the consumer citizens, it seems particularly relevant to address some of the controversial issues such as confidentiality, qualifications and the use of a statewide administrative order.

Confidentiality

There is a position that the parenting coordination session should be confidential and what occurs in parenting coordination should not be disclosed to the Court or any third party. The rationale is that parenting coordination is akin to counseling and that the parties will not openly and freely discuss issues, concerns and problems if they know that all their statements can be used against them in Court. Further, some would argue that it is only through the process being confidential that the parties will truly express their feelings and not just be playing for the Court. If timesharing or other child related issues need to be investigated, a child custody evaluator should be appointed to address the issues and report to the Court and the parties. It is not the place of the parenting coordinator to act as a custody evaluator or advisor.

However, the majority of states that have parenting coordination statutes provide for a non -confidential process. The rationale in these states is that allowing the parenting coordinator to testify or the parties knowing that the parenting coordinator can testify adds accountability to the parent coordination sessions. The parties are apt to behave more reasonably if they know that if they can not agree on an issue and have to have the Court decide the issue, the parenting coordinator will be able to testify regarding what happened in the parenting coordination sessions.

There are different levels of confidentiality in the parenting coordination process. Parenting coordinators could be allowed to: (1) just write status reports to the Court with copies to the parties; (2) testify only upon motion by a party or the Court's own motion and a showing of good cause; (3) testify upon either party's request; and/or (4) be allowed to talk freely with either party, their counsel or the Court. States with parenting coordination statutes have applied different standards as to when to allow a parenting coordinator to testify. Some provide for allowing a parenting coordinator to testify only on a showing of good cause; others require the parties have to first agree at the onset of the parenting coordination process and specifically allow the parenting coordinator to testify; and other states leave it up to the individual judge to request the testimony. Florida Supreme Court Justice Barbara Pariente created a workgroup to address parenting coordination and develop a model Administrative Order. The workgroup proposed model Administrative Order addresses confidentiality in section 9. Section 9.4 essentially precludes the use of a parenting coordinator as a tool for adversarial litigation in a change of custody proceeding. It is essential to leave the coordinator out of a position that will compromise neutrality if at all possible.

Even in the two states where the process or a certain level of the process is held confidential by statute, exceptions are included that are generally related to mandated reporting. At the least, parenting coordinators should be allowed to provide status reports to the Court when there is disagreement about the issues. In some jurisdictions, the Court requires case management conferences every 90 days, including the participation of the parenting coordinator, even if there are no disagreements. This would allow the Court to determine that the parties have in good faith attempted to address the issue, what steps were taken in addressing the issue, and provide the parenting coordinator's recommendation in resolving the issue. As set forth by the Florida Chapter of the AFCC in their suggested ethical guidelines for parenting coordinators in Florida, the parenting coordinator's duty should always be the best interest of the child, and the Court should be aware of what is happening in the parenting coordination process.

Colorado statutes provide for different levels of confidentiality associated with different levels of decision-making authority. More transparency is required when more power is assigned. For example when the decision maker is called upon to arbitrate a decision, the coordinator must provide a decision in writing to the Court. Testimony is not required unless both parents and the Court agree. In California, the process does not allow for testimony, however, the decisions made are subject to judicial review. Texas is the only state with a statute that describes parent coordination as completely confidential, but Texas is now moving toward amending their legislation to make the confidentiality clause optional and allow for certain information to be an exception to confidentiality.

This reporting requirement seems consistent with the best interest of the children who may be exposed to domestic violence, substance abuse or untreated mental health issues that all have the potential for long-term harm to the children and their development into adulthood. Furthermore, specific precautions with regards to certain information must be taken when domestic violence exists as a potential danger. A coordinator's presence allows for the possibility of identification of these issues so that the court may make decisions that will benefit the family. Furthermore, a courteous coordinator would be well advised to work with the attorneys on both sides and instill an atmosphere of collaboration. For example, when given a chance to know the direction the case is taking, a collaboratively minded attorney may counsel their client to voluntarily attend counsel-

ing rather than waiting to be ordered to go. Another area that has yet to be addressed is the developmental needs of special needs children.

The parenting coordination process should not be confidential. Unlike mental health counseling or mediation, the parenting coordination session is not about the parties, but about their children. To hold parents accountable only motivates them to be reasonable. If they are not, the Court should be made aware of the parent's actions. Some would argue that a parent will just act to appease the parenting coordinator. This however should be seen as a positive, not a negative, to allow for non-confidentiality of the process. Whatever the motivation of the parent, it is the end result that is important and that end result should be ensuring that the best interest of the children is accomplished. Confidentiality creates lack of accountability and the ability of either parent to frustrate the system and then misrepresent their positions in Court. Parenting coordinators should be prepared to advise the Court and the parties verbally and in writing with what has occurred in the process and what recommendations they have in resolving issues about which the parties *cannot* agree.

Qualifications for a Parenting Coordinator

The AFCC is the only organization to have proposed an international standard for parenting coordination including qualifications standards. It was recommended that a coordinator be "an experienced licensed mental health or legal professional with training in mediation or a certified family law mediator with a master's degree in a mental health field." In addition, it was recommended that the parenting coordinator receive parenting coordination specific training addressing a variety of issues including court specific procedures, domestic violence and child maltreatment. Lastly, continuing education in one of the relevant disciplines was also recommended.

Every statute addressing the subject of qualifications is unique. Most require specific parenting coordination training. Some definitions are very broad to include "education and experience the court finds appropriate." There is a disparity in levels of education required spanning from "education and experience to "bachelor's degree" to "licensed in relevant profession with a number of years of experience." In addition, some statutes require the parenting coordinator to participate in a supervision group.

Several states require specific domestic violence training that ranges from four to 30 hours. The most lethal times for families experiencing domestic violence dynamics are at separation and at child exchange. A parenting coordinator should be aware of and trained to deal with the dynamics of domestic violence.

Due to the dangers inherent in domestic violence dynamics, some people believe that training equivalent to Core Competency Advocacy Training certification by the Florida Coalition Against Domestic Violence (FCADV) in the amount of 30 hours would be a minimum base level knowledge required for the role of parenting coordinator. The state of Vermont is one of two states actively using parenting coordination for cases that involve domestic violence that are also considered high conflict. They require 60 hours of training followed by a certain amount of time working under the supervision of an experienced practitioner. They are claiming relitigation rate reduction by 70 to 90%.

No matter what the legislature may define as appropriate qualifications for a parenting coordinator, it is important to allow for the uniqueness of each family's needs. Some may have religious reasons to resist receiving services by persons trained in a mental health profession, while others may have a genuine need to use someone like a certified rehabilitation counselor to address issues for children with special needs. Parents should be allowed the freedom to choose a coordinator whose qualifications to which they can agree are satisfactory, just as parties are provided the option to agree to a mediator that may not be certified by the Supreme Court of Florida.

Should the Parenting Coordination Order be Specific or General

When attorneys and their clients understand the value of parenting coordination and are prepared to work collaboratively with a parenting coordinator, there is much to be gained from a general non-specific order allowing the parenting coordinator flexibility to simply be used as a consultant to work out the parenting disagreements in a manner that will refine the parenting plan and remain a friendly rather than threatening force. Using a non-adversarial process can help the family move toward healing by becoming child focused as they work together for a common goal. Sometimes a detailed order can hinder such an atmosphere especially when parents are keenly aware they have been disempowered.

However, detailed orders outlining the role and responsibility of the coordinator can be necessary when the reason for ongoing conflict can be found in dysfunctional behaviors in need of evaluation and treatment. Asking a seasoned professional to simply report on whether the process would be appropriate for the parties and/or to report any time the process appears inappropriate for the parties may be an option to consider. Some people have the belief that a lengthy order of appointment is the best tool to curtail abuses in the process and give both parties and the parenting coordinator the ground rules for implementing the parenting coordination process. With the goal of contributing to a more unified standard of practice, the Florida chapter of the AFCC has worked with all the major stake holders in the state by consensus to devise suggested ethical guidelines for parenting coordinators. The guidelines can be adopted in whole or in part by any organization that wishes to adopt them.

Whether a parenting coordination order should be detailed or not should be decided by the relationship between the parents and the needs of the children. If the parents are amicable and can work together with the assistance of a parenting coordinator,

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then a general order appointing the parenting coordinator instructing the parents to employ the parenting coordinator to address child related issues may be sufficient. However, in adversarial divorces where one or both parents are in a constant struggle, a very detailed order may be necessary to lay the ground rules for the parenting coordination process. In such cases, it is only a matter of time before the parties will disagree on an issue involving the children and Court intervention will be sought. At that time, issues will arise such as: (1) can the parenting coordinator decide issues that need immediate attention or that are not significant issues as agreed to by the parties; (2) can the parenting coordinator testify or advise the Court of what occurred in the parenting coordination process, (3) can there be depositions of the parenting coordinator and subpoenas to get the parenting coordinator's file including notes; (4) can the parenting coordinator be disqualified or replaced, with what the "losing" parent will say is clear bias against him or her, and (5) if allowed to testify who should pay for the parenting coordinator time.

It is no surprise that the best predictor for children's adjustment to divorce is the level of parental conflict. Children benefit from being shielded from parental conflict. Having a well trained, ethical parenting coordinator enhances children's chances at more successful adjustment to family reorganization (a nice euphemism for divorce). A parenting coordinator can focus on educating parents about peaceful conflict resolution, safety focused child exchange planning and creative solutions to enhance children's growth and development. Not only will parents feel that they were both involved in the process of discussing and reaching resolution of issues regarding their children, but also the parenting coordination process will be a much more efficient and cost effective method of resolving children's issues. Parenting coordination empowers parents to parent, rather than requiring them to spend lots of money and time to empower the Court to make parents behave like parents.

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