

**PARENTING COORDINATION:  
IMPLEMENTATION ISSUES<sup>1</sup>**

**April 30, 2003**

**FORWARD**

Denise McColley, AFCC President 2001-02, appointed the AFCC Task Force on Parenting Coordination and Special Masters for the purpose of gathering information about this new professional role. (We later dropped “Special Masters” from the title as we decided that “Parenting Coordination” is the generic name for these high conflict management activities.) Although we originally discussed creating model standards of practice, the Task Force agreed that the role is too new for a comprehensive set of standards. After receiving numerous requests for information about the role, we decided that the most valuable service that the Task Force could serve was to lay out the issues inherent in the role and the manner in which jurisdictions that have parenting coordination have resolved those issues. Although this paper has been a joint effort, the lead author was BeLisa Sydlik. She generously allowed us to build on her earlier research and writing on parenting coordination which she had conducted for the Oregon courts. She compiled the final version of this document.

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**ABSTRACT**

The parenting coordinator model (“PC model”) has been implemented in many states as an intervention for dealing with high conflict families in domestic relations proceedings before the courts. The PC model has been repeatedly recommended by professionals as an intervention to help families structure, implement, and monitor viable parenting plans and to reduce re-litigation rates where high conflict threatens the family adjustment process. This article summarizes current professional literature on the PC model and discusses the PC model as it has been implemented in various states, outlining the implementation issues encountered. This information may serve as a guide for determining the feasibility of establishing the PC model in other jurisdictions, and provides insight into potential impediments and possible resolutions.

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<sup>1</sup>VERSION #16; Revised 4/30/03.

## INTRODUCTION

The parenting coordinator model (“PC model”) is a “new kind of professional role,”<sup>2</sup> recently implemented in a number of states including Arizona, California, Colorado, Georgia, Massachusetts, Oklahoma, Oregon, Vermont, Hawaii, Idaho, New Mexico, North Carolina, and Ohio.<sup>3,4</sup> It is an innovative approach which has been increasingly recommended in the professional literature as a means to deal with high conflict and alienating families in domestic relations proceedings before the courts. This article discusses how the PC model has been implemented in a number of states, identifying the most frequent implementation issues encountered and different approaches to resolve them, and can serve as a framework for developing the PC model in other jurisdictions.

Elements of the PC model can be found in early notions about case management where close oversight and monitoring of individual cases was found helpful, if not essential, for families repeatedly and protractedly involved in litigation.<sup>5</sup> The first formal conceptions of parenting coordination appears to have developed out of the work of a group of Denver-metro lawyers and mental health professionals who convened a “high conflict study group” in 1992, initially for mutual support as they worked with high conflict couples, and then to develop a model of parenting coordination. Two members of this group, Carla Garrity, a child psychologist, and Mitchell A. Baris, a psychologist, published a book in 1994 setting forth the group’s model of parenting coordination and a complete scheme to identify and deal with alienating and high conflict parents.<sup>6</sup> The “high conflict study group” published a new book with others setting forth a complete understanding of the dynamics of high conflict, defining the specific functions or spheres of activity

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<sup>2</sup>As stated in Johnston, J.R. and Roseby, V. (1997) *In the Name of the Child*, New York: The Free Press, at p. 243.

<sup>3</sup> The model may be called different things in those states implementing it; e.g., “special master” in California, “med-arbiter” in Colorado, “wiseperson” in New Mexico, “custody commissioner” in Hawaii, “family court advisor” in Maricopa County, Arizona, formerly “resolution coordinator” in Oklahoma, and formerly “parenting referee” in Oregon. For simplicity, use of the term “parenting coordinator” in this article is meant to apply to all models regardless of nomenclature and is intermittently abbreviated herein as “PC.”

<sup>4</sup> The Vermont Family Court Mediation Program/PC Protocols (April, 1998) defines parenting coordination as “[a]n alternative dispute resolution process for parents for whom mediation is inappropriate due to high level of conflict or domestic abuse in the relationship. The service is offered to separated parents to assist in developing safe, workable plans on behalf of their children.”

<sup>5</sup>King, D.B., Justice. (1993) Accentuate the Positive — Eliminate the Negative *Family and Conciliation Court Review* 31:1, pp. 9-28.

<sup>6</sup>Garrity, C.B. and Baris, M.A. (1994) *Caught in the Middle: Protecting the Children of High-Conflict Divorce*. New York: Lexington Books. As visualized by Garrity and Baris, the “parenting coordinator”: may be appointed in both alienation and high conflict cases; can be a mental health professional, a court-appointed guardian or a well-trained paraprofessional with a background in family law, conflict resolution, mediation, family therapy and child development; has access to all relevant players in the family’s situation, including attorneys, therapists, teachers, caretakers; assists in the creation of a parenting plan, or monitors compliance with it, and mediates disputes as they arise over implementation of a parenting time/visitation schedule and modifications thereto; serves an educative role, teaching parents how to minimize conflict, disengage from each other, and about child development and children’s issues in divorce.

of the parenting coordinator, outlining practical issues PCs typically encounter, and with an appendix of useful forms, orders, and protocols.<sup>7</sup>

Similarly, in the early 1990s, counties in Northern California were developing parenting coordination models derived from both mediation and special master statutes. These counties developed detailed orders of appointment of parenting coordinators that specified many of the parameters of functioning that now define the role, including scope of authority, decision-making, quasi-judicial immunity, judicial review, fee structures and grievance procedures. In 1994, Terry Johnston, a psychologist and parenting coordinator in private practice, reported on the only study to date of 166 cases completed by 16 special masters in Santa Clara County.<sup>8</sup> A comparison of court appearances the year prior to the appointment of a special master to the year after the appointment found that there were 993 appearances for these 166 cases in the one year previous to the appointment (an average of 6 court appearances per case) and 37 court appearances in the one year after the appointment (for an average of .22 appearance per case). This nearly 25-fold decrease in court appearances in the case sample provided compelling data to support the utility of the process in unburdening the courts of these high conflict cases.

Others have included the PC model in a discussion of their research and professional work:

— In their discussion of the need to build multi-disciplinary partnerships with the courts, Janet Johnston and Vivienne Roseby identify the “coparenting arbitrator” as one of a number of increasingly coercive regulatory functions the courts have developed to deal with cases in which there are ongoing disputes over parenting time.<sup>9</sup> These authors note that the role may be useful in a number of situations including:

- where parents with severe personality disorders are locked in immutable impasses and are chronically litigating;
- where parents are less character disordered but have great difficulty making important mutual and timely decisions, and require assistance coordinating their parenting efforts;
- in potentially abusive situations where there are ongoing but unsubstantiated allegations of physical or sexual abuse of a child; and
- where a parent has intermittent mental illness.

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<sup>7</sup>Baris, M.A., Coates, C.A., Duvall, B.B., Garrity, C.B., Johnson, E.T., LaCrosse, E.R., Working with High Conflict Families of Divorce: A Guide for Professionals. New Jersey: Jason Aronson Publishers, 2000. The four main PC functions include: (1) *assessment* of the family’s dynamics, the parents’ defenses and flash points, determining other key players in the conflict, and identifying the couple’s metaphors; (2) *education* about child development, parallel parenting techniques to disengage, the legal system, other resources, and may include educating children re: strategies for extricating themselves from the middle of their parents’ conflict; (3) *interfacing* with other professionals involved in the family’s situation, case or family conferencing, and facilitating development of a cohesive approach to the family amongst school personnel, therapists, attorneys, social services, religious entities, and extended families members; and (4) *intervention*, including problem solving, modeling new behaviors and perceptions, reframing issues, building empathy, setting limits, refocusing on the children, and conceptualizing a vision for the family to move forward into a new structure of relating.

<sup>8</sup> Johnston, T., Cost Effectiveness of Special Master Use, unpublished report, 1994.

<sup>9</sup> Johnston, J.R. and Roseby, V. (1997) *In the Name of the Child*, New York: The Free Press, at pp. 243-246.

— Philip Stahl, a California custody evaluator, writer and frequent presenter on high conflict issues, includes the use of a “*case manager, special master, guardian ad litem or parenting coordinator*” as a recommended intervention in both alienation and high conflict cases to monitor parental cooperation with court orders, and to enforce compliance or to report to the court quickly when one parent is out of compliance. In high conflict cases, where every little issue is a potential source of conflict, this person also serves as a “*neutral decision maker*” to assist parents with their day-to-day disputes,<sup>10</sup> and to educate parents about the processes of “disengagement” and “parallel parenting.”<sup>11</sup>

— In September 2000, the American Bar Association, Family Law Section, sponsored an interdisciplinary, international conference on high conflict custody cases and designed an action plan for reforming the legal system for children. The conference identified courts, attorneys, and mental health professionals as having the greatest power to influence how high conflict cases are handled. Conference attendees identified collaborative efforts amongst the bench, bar, and mental health professions as a key element in accomplishing this goal. They also recommended that “[p]arent monitors, coordinators, or masters who are professionals trained to manage chronic, recurring disputes, such as visitation conflicts, and to help parents adhere to court orders” be provided as a fundamental service within the court system.<sup>12</sup>

— Parenting coordination has typically been implemented by private providers appointed by the court. However, it may be an increasing trend to incorporate parenting coordination into the overall court service delivery system; e.g., as part of the case management services provided by courts.<sup>13</sup> In Austin, Texas, the monitoring and counseling aspects of parenting coordination have been implemented in the context of an overall Domestic Relations Office (DRO). With funding made available from the U.S. Department of Health and Human Services to enhance parental access and visitation, the Travis County DRO implemented a “Cooperative Parenting Program (CPP).” The CPP provides supervised access and neutral exchange services, psycho-educational classes, and legal

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<sup>10</sup>Stahl, P.M. (1999) *Complex Issues in Child Custody Evaluations*, Thousand Oaks, London, New Delhi: Sage Publications, Inc. Press. The neutral decision maker also educates the parents in the processes of “disengagement” and “parallel parenting,” and helps create a parenting plan which takes into account the child’s needs and activities and how each parent can individually accommodate and participate in them. This approach avoids the necessity for repeated returns to court which Stahl states is not equipped to deal with the types and frequency of problems these families have.

<sup>11</sup>*Disengagement* is viewed by many professionals as an essential process for successful negotiation of the dissolution of marriage and restructuring of the family. *Parallel parenting* is the means by which *disengagement* can be accomplished and entails establishing new parenting roles that are conducted separately on two parallel tracks. Households are separate, each parent assuming total responsibility for the children during the time they are in his/her care. Parents follow a policy of non-interference with the other parent and children are kept out of parental interactions which are minimal. Communication about the children typically do not take place face-to-face. Usually, major decisions are communicated rather than discussed and parenting time plans are followed exactly with little or no flexibility in scheduling. (Divorce Transitions Inc., 1997, *Parallel Parenting*, hand-out literature; Parents Apart® Program, UMassMemorial Medical Center, Child and Family Forensic Center, Worcester, MA.)

<sup>12</sup>Conference Report and Action Plan, *High Conflict Custody Cases: Reforming the System for Children*, Wingspread Conference at Racine, Wisconsin, September 8-10, 2000, sponsored by the American Bar Association and The Johnson Foundation.

<sup>13</sup>For more information on the evolution of court services, including parenting coordination, see Pearson, J. (1999). Court services: Meeting the needs of twenty-first century families. *Family Law Quarterly*, 33:3, pp. 617-635.

services to enforce access. In addition, it provides “case management services” which resemble the functions of a parenting coordinator in that program staff meet with the parents to facilitate a cooperative plan for future parenting and dispute resolution. These case managers monitor the case closely, assure parents comply with educational or counseling requirements, and have weekly or biweekly contacts with third parties to monitor progress. In cases where parental alienation is suspected, a guardian *ad litem* may be appointed to assess the case, make recommendations, and oversee and adjust graduated visitation schedules, also performing a function similar to that of parenting coordination. Both the case manager and the guardian *ad litem* may provide an attorney, also called a “friend of the court,” with information which will subsequently be used in court proceedings to enforce access.<sup>14</sup>

The PC model has been implemented in recent years in a number of states. The remainder of this article discusses issues which frequently arise during the implementation process and different approaches to resolve them. The following can serve as a framework for developing the PC model in a local court, and anticipates issues which will be considered and resolved in the process. these issues include:

- Statutory Authority (at p. 6)
- Appointment of the Parenting Coordinator (p. 8)
- Timing of the Parenting Coordination Intervention in the Proceeding and Jurisdictional Issues (p. 10)
- Term of Appointment, Removal and Resignation (p. 13)
- Areas of PC Decision Making Authority (p. 15)
- Confidentiality and Ex Parte Communications (p. 16)
- Access to Non-Parties, Children and Privileged Information (p. 19)
- Referral for Third-Party Services (p. 20)
- Special Considerations for Families with Allegations of Domestic Violence (p. 21)
- PC Proceedings (p. 23)
- PC Compensation (p. 24)
- PC Qualifications and Training (p. 25)
- Submission and Objection to PC Recommendations/Reports (p. 27)
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- Immunity (p. 31)
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- Further Research Needed (p. 33)

## **1. Statutory Authority**

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<sup>14</sup>This information derives from a workshop presentation at the Association Family and Conciliation Courts Annual Conference, New Orleans, May 31-June 3, 2000; Workshop 27, *It Takes a Village to Fix an Access Problem*, by Susan E. Cefai, J.D., Katy Kappel, M.A., Lara Nixon, M.A. and Dana Williamson.

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Despite the increasingly prevalent use of the PC model, PC statutes are only known to exist in Idaho, Oklahoma, and Oregon. Other states have “borrowed” the authority of a related statutory concept to authorize parenting coordination; e.g., using existing statutory authority for guardians *ad litem*, mediators, referees, or special masters.

- **Arizona.** Maricopa County, Arizona courts appoint PCs, called “family court advisors (FCA),” pursuant to two statutes: A.R.S. §25-405(B) and A.R.S. §25-410(B).<sup>15</sup> These laws permit the court to seek the advice of professional personnel, whether or not employed by the court on a regular basis, and to request that a “...*local social service agency [exercise] continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.*”<sup>16</sup> Maricopa County’s Local Rules of Practice, Rule 6.12, specifically provides for the appointment of a FCA if the court finds “*any of the following: (1) The parents are persistently in conflict with one another; (2) There is a history of parental alienation, substance abuse by either parent, or family violence; (3) There are serious concerns about the mental health or behavior of either parent; (4) The children include infants or toddlers; (5) A child has special needs; or (6) It would otherwise be in the children’s best interests to do so.*” The local rule contains additional provisions regarding the scope and duration of the appointment, the FCA’s authority, immunity, and qualifications.

- **California.** In California, the most prevalent statute which provides the authority for parenting coordination is the special master statute. (California Evidence Code, §730; See also, Code of Civil Procedure, §§ 638 and 1280.) 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 expertise in high conflict custody cases). The courts in California routinely ordered parties into the special master process until the appellate court ruling in *Ruisi v. Theriot*.<sup>17</sup> This case has been interpreted such that any broad delegation of judicial authority, including the appointment of a special master, requires the agreement of both parties.

- **Colorado.** The difficulties in legislating the PC position are demonstrated by the Colorado example. In 1999, the Colorado legislature considered proposed language which detailed at length the role and scope of authority of the PC, but the legislation was withdrawn because of the bar’s concern that too much authority was granted the parenting coordinator without an adequate mechanism for judicial review. Another criticism of the Colorado legislation was that it authorized

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<sup>15</sup>A.R.S. §25-405(B) states: “The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and shall be made available by the court to counsel, upon request, under such terms as the court determines. Counsel may examine as a witness any professional personnel consulted by the court, unless such right is waived.” A.R.S. §25-410(B) states: “*If either parent requests the order, or if all contestants agree to the order, or if the court finds that in the absence of the order the child’s physical health would be endangered or his emotional development significantly impaired, and if the court finds that the best interests of the child would be served, the court shall order a local social service agency to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out. At the discretion of the court, reasonable fees for the supervision may be charged to one or both parents, provided that the fees have been approved by the supreme court.*”

<sup>16</sup>ARS §§25-405(B) and 25-410(B) may be found on the Internet at: <http://www.azleg.state.az.us/ars/ars.htm>.

<sup>17</sup>*Ruisi v. Theriot*, 53 CalApp4th 1197, 62 CalRptr2d 766, 1997.

the parenting coordinator to determine affairs typically considered the exclusive domain of parents in Colorado, e.g., religion and extracurricular activities of the child.<sup>18</sup>

• **Idaho.** The Idaho legislature passed House Bill 541 which was signed into law with an effective date of July 1, 2002. The law adds a new section to the Idaho Code, Section 32-717D, providing for the post-judgment appointment of a parenting coordinator. The statute requires the PC to provide a status report to the court at least once every six (6) months and to comply with prescribed duties and responsibilities based upon standards and criteria adopted by the Idaho supreme court. The PC must submit to a criminal history check before being appointed by the court and agree to not require the parties to pay a retainer for services.<sup>19</sup>

• **Massachusetts.** In Massachusetts, the PC intervention has been used for several years with judges relying on their equity powers to make the appointments.<sup>20</sup> Currently, efforts are underway to implement PC legislation, and draft statutory language has been proposed for review by judges, attorneys, and others. A final draft version of the proposed statutory language was presented for hearing to the Massachusetts legislature in December 2002. Issues which arose in contemplation of the proposed legislation included concerns that the courts cannot appoint a PC post-judgment when the case has been concluded and there is no pending proceeding, the costs involved, and ordering the appointment over the objections of an unwilling party.<sup>21</sup> The proposed bill requires agreement of the parties for the appointment of a parenting coordinator.

• **North Carolina.** There is no statutory authority in North Carolina for the appointment of a Parenting Coordinator, but two judicial districts (Charlotte and Chapel Hill) have adopted Local Rules authorizing such appointments and describing the roles and responsibilities of a PC. As a general rule, courts in North Carolina cannot delegate decision-making authority. Parties may consent, however, to the appointment of a PC, or the court can appoint one to facilitate implementation of a temporary order which is subject to modification, or to address issues raised in motions for contempt or motions to modify custody and visitation provisions of a final order.

• **Oklahoma.** Oklahoma's "Parenting Coordinator Act" was enacted in June 2001, and authorizes appointment of a PC when the court makes specific findings that the case involves high conflict, which is defined as "*any action for divorce, paternity, or guardianship where minor children are involved and the parties demonstrate a pattern of ongoing: (a) litigation, (b) anger and distrust, (c) verbal abuse, (d) physical aggression or threats of physical aggression, (e) difficulty in*

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<sup>18</sup>In Colorado, HB 1298 was proposed during the 1999 legislative session; a copy of the proposed legislation may be accessed on the Internet at: [http://www.state.co.us/gov\\_dir/leg\\_dir/house/prevsess.htm](http://www.state.co.us/gov_dir/leg_dir/house/prevsess.htm). Information about reasons for withdrawal provided by telephone conversation with Michael DiManna, Esq., former chair of the Legislative Subcommittee of the Family Law Section of the Colorado Bar Association, 9/17/99.

<sup>19</sup>“ The full text of Section 32-717D, Idaho Code, may be viewed on the website: <http://www3.state.id.us/oasis/H0541.htm>.

<sup>20</sup>Per telephone conversations with Linda M. Cavallero, Ph.D., Clinical Psychologist and Parenting Coordinator, University of Massachusetts Medical Center, 8/17/99 and 9/23/99; and Dr. Geri S. W. Fuhrmann, Psy.D., Director, Child and Family Forensic Center, University of Mass. Medical Center, 7/22/99; and Hon. Arline Rotman, past AFCC President

<sup>21</sup>From e-mail (4/18/02) with Dr. Robin Deutsch, Co-Director, Children and the Law Program, Massachusetts General Hospital, April 18, 2002; and draft statutory language dated 11/27/02.

*communicating about and cooperating in the care of their children, or (f) conditions that in the discretion of the court warrant the appointment of a parenting coordinator.”*<sup>22</sup>

• **Oregon.** Recent legislation enacted in 2001 in Oregon permits the appointment of a PC, in addition to other interventions, “...to assist the court in creating parenting plans or resolving disputes regarding parenting time and to assist parents in creating and implementing parenting plans....” The legislation identifies these interventions as those which provide “the court with recommendations, and [provide] parents with problem solving, conflict management and parenting time coordination services” to accomplish this purpose.<sup>23</sup>

• **Vermont.** Although there is currently no specific legislation in Vermont addressing the PC model, that state’s legislature has financially supported the concept by awarding the Vermont Court Administrator’s Office budget enhancements for the development of protocols and documents for use by PCs, and to subsidize participants in the program.<sup>24</sup>

## **2. Appointment of the Parenting Coordinator**

Appointment of the parent coordinator is almost always by court order, either at the request of a parent or upon the court’s own motion. A common practice is to request that both parents stipulate to the appointment even where a court order exists since it may not be clear whether the court has the authority to mandate a party to parent coordination over his/her objection. Some jurisdictions provide that the PC may be ordered even where one or both parents object if particular findings are made.

• **Arizona.** A Family Court Advisor (FCA), as PCs are called in Maricopa County, Arizona, may be appointed either by stipulation or motion made *sua sponte* or initiated by a party, and upon a finding that the case involves “*complex family dynamics problems*” requiring “*speedy resolution*” and involving “*mental health and economic issues crucial to the protection of the best interest of the minor child(ren)*.”<sup>25</sup>

• **California.** Most jurisdictions use a standard stipulation and order appointing a special master for the parent coordination role. This detailed order appoints the special master as a subordinate judicial officer within the superior court.<sup>26</sup> The order can specify the scope of authority through a checklist of possibilities, and provides decision-making, data gathering, court review, and

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<sup>22</sup>See Oklahoma Statutes, 43 OS 120.1 et seq, available on-line at the Oklahoma State Courts Network website: <http://www.oscn.net>.

<sup>23</sup> See Oregon Statutes, available on-line as “ORS Chapter 107” at: <http://www.leg.state.or.us/ors/home.htm>.

<sup>24</sup>From e-mail (12/2/99) and telephone conversation (12/18/00) with Jennifer Barker, Parent Coordination Consultant to the Vermont Family Court Mediation Program, and from her December 1999 letter to the Vermont Senate and House Appropriations Committees.

<sup>25</sup>Order of Appointment of Family Court Advisor, Superior Court of Arizona, Maricopa County; provided by Kat Cooper, Associate Clerk of the Court, Director, Family Support Center, Superior Court of Arizona, 1/11/02.

<sup>26</sup>The full text of this appointment order is in Baris, M.A., Coates, et al., Working with High Conflict Families of Divorce: A Guide for Professionals, 2000, at Chapter 13, pp. 198-211.



grievance procedures. It addresses issues such as confidentiality (there is none in the process), handling of fees, and informed consent, as well as terms of appointment and substitution of the special master.

- **Colorado.** Colorado’s proposed 1999 legislation would have permitted appointment pursuant to the parties’ agreement or motion, or by the court “upon its own motion.” If either party or the child’s representative objected, the court could still appoint the PC provided the order made the required finding that “*the parenting issues in the case are complicated, that the parties demonstrate a pattern of continuing high conflict, or that such other conditions exist that warrant the appointment...*”<sup>27</sup> Currently, however, PCs must be appointed pursuant to stipulation of the parties if the scope of the PC’s authority includes arbitration.

- **Massachusetts.** The proposed legislation being considered states that “*A Parenting Coordinator may be appointed during the pendency of an action or in a judgment affecting parents and children, especially in high-conflict cases. The court may by agreement of the parties, appoint a parenting coordinator to address any disputed child-related issues as authorized by an order of the court.*”<sup>28</sup>

- **North Carolina.** The court may appoint a PC on its own motion, or on motion of either party, or the guardian *ad litem* when the parties persist in litigating issues involving the children, or when “...the children’s best interest would be served by the appointment.” The rules call for an “appointment conference” (See footnote 56 *infra*), a procedure that resulted from frequent confusion among parents, attorneys, and judges about the purposes and goals of parenting coordination and the logistics of getting the process underway. The first step in this procedure is the completion by the court of a referral form identifying the reasons for appointing a PC. The court distributes this document to the parties and to the proposed PC and schedules an “appointment conference.”

The rules provide that the parties, their attorneys, guardians *ad litem*, and the proposed PC be present at the “appointment conference” and that each parent bring an “Affidavit of Financial Standing.” They further specify that the court “...explain the PC’s role, authority, and responsibilities; determine who will provide what information to the PC; provide for financial arrangements...and enter the Appointment Order.” The PC and any guardian *ad litem* are to bring “...all necessary releases, contracts, and consents...” These are to be signed by the parties, and they and the PC are to schedule the first session(s). The goals of the “appointment conference” are to establish a clear understanding of parenting coordination and to get it started quickly and smoothly.

- **Oklahoma.** The PC statute provides that the court shall not appoint a PC if any party objects “*unless: (1) the court makes specific findings that the case is a high-conflict case; or (2) The*

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<sup>27</sup>HB 1298, 1999 Colorado legislative session. A further restriction on the PC appointment was the required finding that the parties had the financial means to pay the PC’s fees, but permitting the court to appoint a PC to serve on a volunteer basis in cases of hardship. A copy of the proposed legislation may be accessed on the Internet at: [http://www.state.co.us/gov\\_dir/leg\\_dir/house/prevsess.htm](http://www.state.co.us/gov_dir/leg_dir/house/prevsess.htm).

<sup>28</sup>Draft Massachusetts statutory language dated 1/27/02. “High conflict” is defined as “*any action where minor children are involved and the parties demonstrate a pattern of ongoing: (i) difficulty in communicating about and cooperating in the care of their children; (ii) litigation; (iii) anger and distrust; or, (iv) conditions that in the discretion of the court warrant the appointment of a parenting coordinator.*”

*court makes specific finding that the appointment of a parenting coordinator is in the best interest of the minor child.*"<sup>29</sup>

• **Oregon.** In Oregon, one jurisdiction has interpreted the court's authority to appoint a PC over a party's objection as limited and requiring a showing of exceptional circumstances. Thus, the PC order provides for findings including that "[o]ne or both parents are unable to work cooperatively to engage in joint decision making for their child"; "that due to the existing level of parental conflict, the child/ren's relationship with father/mother/both parents has been seriously disrupted"; and "that the only way the child/ren will be able to develop a normal relationship with and spend time with both parents is through the use of a Coordinator with the power to coordinate parenting time, parenting exchanges, communication, and exchange of information and records."<sup>30</sup>

• **Vermont.** In Vermont, the PC appointment is made pursuant to an "Order of Referral for Parent Coordination" but requires execution of an "Agreement to Enter Into Parent Coordination."<sup>31</sup>

### **3. Timing of PC Intervention in Family Law Proceeding and Jurisdictional Issues**

Some states view the PC intervention as appropriate only for post-decree matters after a parenting time plan has already been fashioned through other processes, such as mediation or by the court. Other states appoint PCs to assist in developing the initial parenting time plan, as well as monitoring and enforcing it after it becomes part of the final decree or judgment.

• **Arizona, Maricopa County.** The order appointing a FCA limits his/her authority to the "implementation, clarification, and enforcement of any temporary or permanent custody or visitation/access orders of the Court."

• **California.** The appointment of parenting coordinators typically occurs after the case has progressed through the comprehensive family court process and a parenting plan has been ordered. More recently, due to the long periods of time necessary to evaluate and adjudicate high conflict cases, the courts have provided a time-limited appointment to manage the case pending the outcome of the court process. Once the decree has been made, the appointment terminates or a stipulation is reached to continue the process. This coordinated appointment of both a custody evaluator and temporary parent coordinator has been quite effective in high conflict cases that require intensive case management while the evaluation is being completed (which might take several months).

• **Colorado.** PCs are generally used in Colorado in post-decree high conflict parenting situations where communication has been difficult and litigation ongoing. The proposed Colorado legislation would have authorized PC appointments to both create and implement existing parenting plans. Colorado requires that parents include a dispute resolution process in their Parenting Plans.

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<sup>29</sup>See Oklahoma Statutes, 43 OS 120.3 (B), available on-line at the Oklahoma State Courts Network website: <http://www.oscn.net>.

<sup>30</sup>Order Appointing Parenting Time Coordinator, prepared by Marion County Family Law Advisory Committee, Hon. Pamela Abernethy, Chair, and Megan Hassen, Marion County Circuit Court legal analyst, 2/5/02.

<sup>31</sup>From e-mail (4/29/02) and documents provided by Susan Fay, Director, Vermont Family Court Mediation Program.

Typically, a med-arbiter or parenting coordinator is included at that stage of agreement. Therefore, when a parenting coordinator (or med-arbiter) is appointed in Colorado pursuant to stipulation and court orders in the decree of dissolution, the jurisdiction continues past the entry of the decree.

• **Massachusetts.** The proposed legislation provides that a PC “*may be appointed during the pendency of an action or in a judgment affecting parents and children, where it is in the best interests of a child, especially in high-conflict cases.*”

• **North Carolina.** PCs are almost always appointed after the entry of an order establishing a parenting plan. The order may result from mediation, litigation, or from a settlement (often brokered by a guardian *ad litem*) calling for appointment of a PC. Appointment of a PC is frequently the result of a recommendation by a custody evaluator.

• **Oklahoma.** The Oklahoma statute presumes that an order is in place, whether temporary or permanent, when a PC is appointed. The Oklahoma statute reads, “*The authority of a parenting coordinator shall be specified in the order appointing the parenting coordinator and limited to matters that aid in communication of the parties and the enforcement of the court’s order of custody, visitation or guardianship.*”<sup>32</sup> (Emphasis added).

• **Oregon.** The committee working on a form of order for the PC intervention determined that the PC model was most appropriate after mediation, parent education, and other cooperative strategies had been attempted and judgment entered. There was also concern that bringing the PC in before entry of final judgment would confuse parents as to the role of the court as the ultimate authority in their proceedings.<sup>33</sup>

• **Vermont.** Vermont’s PC process requires that the court first establish an order of “Parental Rights and Responsibilities” before ordering parent coordination. The PC’s purpose is then to assist the parents in developing a safe, workable parenting plan for their children. If the parents do not reach agreement, the PC is required to “submit a report to the court, including a narrative summary of meetings with the parties and others and detailed recommendations for a parent-child contact/parenting plan.”<sup>34</sup>

*Continuing Jurisdiction.* One important issue that jurisdictions using the PC model find themselves facing is concern that judges lack the authority to appoint an intervention which continues after the case has concluded and can no longer be considered “pending.”<sup>35</sup>

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<sup>32</sup>See Oklahoma Statutes, 43 OS 120.3 (C), available on-line at the Oklahoma Supreme Courts Network website: <http://www.oscn.net>.

<sup>33</sup>From discussions of the Marion County (Oregon) Local Family Law Advisory Committee, February through November 2000.

<sup>34</sup>From documents provided by Susan Fay, Director, Vermont Family Court Mediation Program, entitled “Case Management Flow for Parent Coordination,” December 2001.

<sup>35</sup>This issue has been known to have been raised by concerned individuals discussing the PC intervention in New York and Massachusetts as well.

• **California.** The Santa Clara County model (and many other jurisdictions who use this appointment order) addresses the issue of continuing jurisdiction by appointing the parenting coordinator under Code of Civil Procedure 638. This code 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.

• **Ohio.** In 2001, a volunteer group of family lawyers and mental health professionals in Columbus, Ohio, organized for the purpose of creating a Parenting Coordinator Pilot Project program for their local domestic relations court, without the benefit of any state statute or court rules applicable specifically to “parenting coordination.” Because of a combination of current political and financial circumstances, a PC process in Ohio must be constructed in a way that is functional under existing statutes, court rules, and practice. In Ohio, when a divorce decree or parenting order is filed and signed by the judge, the case normally is terminated on the judge’s docket, and the case file is closed at the clerk of court’s office. Procedurally, the only way to reactivate such a case is by one of the original parties filing a motion to invoke the continuing jurisdiction of the court. Generally, judges do not allow cases to remain open on their dockets after a final order is filed.

Currently Ohio has the Uniform Arbitration Act (Ohio Revised Code Sections 2711.01 – 2711.16), and Rule 15, Rules of Superintendence for the Courts of Ohio, in effect. Rule 15(B)(1) specifically provides that a judge having domestic relations or juvenile jurisdiction “*may, at the request of all parties, refer a case or a designated issue to arbitration.*” An arbitrator selected pursuant to this section is not required to be an attorney, which would allow a mental health professional to serve as an arbitrator (or parenting coordinator) regarding the enforcement of prior parenting plan orders. An arbitration decision may be appealed and heard *de novo* by the court. Therefore, the filing of a motion asking a court to enter judgment upon an arbitrator’s (parenting coordinator’s) decision or award, or an appeal of the award, is an acceptable procedure for invoking the trial court’s continuing jurisdiction in a post-decree parenting dispute that has been arbitrated.

However, in 2001 the Supreme Court of Ohio decided that, while child support is a proper subject for binding arbitration,<sup>36</sup> children’s issues involving changes in custody and visitation may not be arbitrated.<sup>37</sup> The Court distinguished property and support issues from custody/visitation issues, and reasoned that parents cannot divest a court of its obligation to protect the best interest of children (*parens patriae*). Consequently, the Columbus PC Pilot Project is using the Colorado “mediator” style approach as a model for the creation of its initial PC program, which seems to be the most appropriate alternative under existing Ohio statutes and court rules. Since the Pilot Project was not initiated by the local court, the Columbus group opted initially to propose using PCs as an intervention only in post decree high conflict parenting cases under the Ohio Arbitration Act, rather than Superintendence Rule 15. (See “Franklin County Parenting Coordination Pilot Project Revised Standards and Training for Participants,” adopted September 26, 2002.)

• **Oregon.** In Oregon, a recent appellate case 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.<sup>38</sup> The

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<sup>36</sup>*Kelm v. Kelm*, 68 Ohio St.3d 26, 623 N.E.2d 39 (1993)

<sup>37</sup>*Kelm v. Kelm*, 92 Ohio St.3d 223, 749 N.E.2d 299 (2001)

<sup>38</sup>*Thomason v. Thomason*, 174 Or.App. 37, 23 P.3d 395, 2001.

Oregon workgroup determined that, in light of the *Thomason* opinion, the following language should be inserted into the 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.”*

It is also helpful that there is an authorizing statute in Oregon specifically providing that PCs may be appointed for the purpose of “[m]onitoring 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 post-judgment. As of the date of this article, however, there has been no further appellate case which addresses the inserted language of the Oregon model order or the effect of the statute.

#### **4. Term of Appointment, Removal and Resignation**

The typical term of appointment for PCs appears to be two years, unless otherwise ordered by the court. The PC may resign, be removed, or substituted by legal process. A typical reason for resignation is nonpayment of fees or the PC’s determination that the process has exhausted itself or there are safety concerns.<sup>39</sup>

Removal of the PC may be requested by motion by either or both parents. Most courts reserve the right to determine whether “good cause” for the removal exists. However, where both parties request and agree that the PC should be removed; i.e., by stipulation, the court may grant the motion without exercising its discretion. The PC may be reappointed after expiration of his/her term upon the court's own motion, the request of the PC, or motion of either party.

- **California.** California jurisdictions have detailed provisions in the appointment order that specify the term of appointment (which is negotiated), and a process for reappointment at the end of the appointment. The reappointment process can be set up to be an automatic one-year extension, with the ability of either party to decline the reappointment by a date prior to the termination date, or set up so that the parties must actively stipulate to reappoint the special master. Grievances brought against the special master involve a multi-step procedure designed to provide opportunities to resolve the grievance with the special master prior to submitting the grievance to the supervising judge. The appointment order also provides a clause to handle the necessity for a substitution of the parent coordinator if they resign while the appointment is still in effect.

- **Colorado.** The common practice is to include a term of appointment in the parenting coordinator agreement which can be continued after the term by agreement of all parties. The agreement will also provide for a method of removal or resignation.

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<sup>39</sup>The Vermont Family Court Mediation Program/PC Protocols (April, 1998) provide that the “*PC reserves the right to terminate the dispute resolution process if either parent or the children are being endangered by the process.*”

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• **Massachusetts.** Proposed legislation is for an appointment for a “term certain not to exceed two years, which may be extended by agreement, modified or terminated by the court for good cause”

• **North Carolina.** There is no specific term of appointment in North Carolina. The court may terminate or modify the PC appointment for good cause upon motion of either party, a guardian *ad litem*, at the request of the PC, upon the agreement of the parties and the parenting coordinator, or by the court on its own motion. “Good cause includes, but is not limited to:

- a. lack of reasonable progress over a significant period of time despite the best efforts of the parties and/or the PC;
- b. a determination that the parties no longer need the assistance of a PC;
- c. an impairment on the part of a party which significantly interferes with participating in the PC process; or
- d. the PC is unable or unwilling to continue to serve.”

• **Oregon.** Oregon’s PC process entails a grievance procedure to disqualify a PC “*on any grounds applicable to a Judge or Arbitrator.*” Parents and the PC first discuss the issues giving rise to the grievance and, if not resolved, then one or both parents submit a written letter to the PC detailing the complaint. The PC responds within 30 days and then meets with the complaining party and their attorney, if they have one, for further discussions. If the matter remains unresolved, the complaining party may file a motion to remove the PC, after which the court holds a hearing, reserving jurisdiction to determine responsibility for time and costs spent in responding to the grievance and the PC’s attorneys’ fees.

• **Vermont.** In Vermont, the PC is appointed for an eight (8) week period, following which the court holds a status conference. Vermont’s state office subsidizes parents for this process and the abbreviated term derives from the limited funding available. The former PC program coordinator also notes that these parents have “a low tolerance for lack of resolution.”<sup>40</sup> Vermont PCs try not to go beyond the 8 week period between referral and status conference. At the status conference, a court order is entered and parents engage in a six month trial period to test out the parent-child contact plan. If issues persist, the parents’ case can be reopened and coordination resumed.

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<sup>40</sup>From telephone conversation (12/18/00) with Jennifer Barker, Parent Coordination Consultant to the Vermont Family Court Mediation Program.

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## 5. Areas of PC Decision Making Authority

The PC is typically given varying authority over different parenting time issues depending on the jurisdiction. A common limitation on PC authority is that s/he cannot make changes to a custody determination, make relocation orders, or substantially alter existing access schedules.<sup>41</sup>

Although often not specifically excluded, the modification of child support orders and awards is typically not included in the laundry lists of general functions a PC can perform in most jurisdictions. However, the proposed Colorado legislation would have authorized the PC to determine child support changes if they were related to parenting time issues.

Another limitation sometimes cited is that the PC cannot decide which religion is to be observed by the child(ren)<sup>42</sup>, although two jurisdictions specifically included religious issues in the list of authorized issues a PC could address.<sup>43</sup>

• **California.** In California, the appointment order provides a long checklist of domains of authority (including blanks) which allows the parties to tailor the process to meet their needs. Some orders also provide for three different levels of decision-making (defined by the impact of decisions on the child and parents' relationship with the child) and couples these levels with procedures for greater access to court review. For example, decisions that are about one-time or mundane issues are immediately enforceable and reviewed under an abuse of discretion standard, while decisions that would substantially alter existing timeshare and access arrangements can only be recommended and necessitate endorsement by the court before they would go into effect.

Common issues the PC is typically authorized to address include the following:

- time sharing arrangements, including holiday and summer planning
- daily routine
- daycare/babysitting
- transportation and exchange (drop-off, pick-up)
- medical, dental, and vision care
- psychological counseling, testing, or other assessment for the child(ren)
- extra-curricular activities and arrangements for the child(ren)
- education, including but not limited to school choice, tutoring, participation in special education programs
- discipline

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<sup>41</sup>For example, in Maricopa County, Arizona, the family court advisor “...is not authorized, unless specifically ordered by the Court, to investigate or make recommendations regarding substantial changes to existing custody orders, such as modification of legal custody, relocation of the child/children, alteration of existing access schedules which substantially changes the access time of either parent.” And, in Oregon, the PC order provides that “If the Coordinator’s recommendation amounts to a substantial change of circumstance modification of the parenting plan, as determined by the Coordinator or either parent, the recommendation must be accompanied by a stipulated motion to modify.”

<sup>42</sup>The proposed Colorado legislation specifically stated that the PC did not have the authority to decide “the religion to be observed by the minor or dependent children.”

<sup>43</sup>In Tulsa, Oklahoma, “religion issues” is included in the local court rule as an example of “family issues for parenting coordinator intervention,” and in Oregon, the proposed referee order states that the parenting referee has the authority to resolve disagreements including, “...but not limited to, ... religious observances and training for the child/ren...”

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- clothing, equipment, and personal possessions of the child(ren)
- alteration of appearance of the child(ren), including haircuts and ear/body piercing
- child(ren)’s travel
- methods of communication
- certain payment issues (e.g., for child(ren)’s extra-curricular activities, daycare services, transportation between households, etc.)
- other “parenting type” issues, either submitted by the parties or ordered by the court

While some jurisdictions indicate recommendations regarding supervised visitation/ parenting time or exchanges were within the purview of the PC’s authority, other jurisdictions either expressly removed this authority or did not mention it.<sup>44</sup>

• **Massachusetts.** The PC is authorized to address “*any disputed child-related issues as authorized by an order of the court.*”

• **North Carolina.** The PC is authorized to assist parents in implementing the custody and visitation order, in promoting the children’s best interests and needs, and in resolving any disputes not specifically governed by the order, at least until the court acts. The PC is not authorized to deal with financial issues.

• **Ohio.** Recently adopted standards in Franklin County exclude from PC authority the following:

- a. termination of parenting plans or orders;
- b. modification of a prior parenting plan, decree, or order in a manner that would reduce the total parenting time of either parent during a calendar year, or that would change the designation of residential parent for school purposes;
- c. supervised parenting time for either parent;
- d. relocation of the residence of a child; or
- e. the formal or informal religious education of a child.

## 6. Confidentiality and Ex Parte Communications

a. **Confidentiality.** Most frequently, the PC process is *not* confidential; i.e., communications with the PC are not confidential and the PC can be called as a witness to testify to the court and/or to make recommendations regarding parenting time or custody issues.

• **Arizona, Maricopa County.** The model Family Court Advisor (FCA) order explicitly states there is no confidentiality regarding communications with or to the FCA, and that the FCA “may

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<sup>44</sup>The Colorado legislation would have authorized the parenting coordinator to decide all disputed issues including “...supervised parenting time.” In Vermont, the “Agreement to Enter into Parent Coordination” provides that the PC “*is an advocate for your child{ren} and may make recommendations about visitation schedules, safety issues, drop-off and pick-up arrangements, and other child-related concerns.*” Oregon’s model order states that the PC has the authority to resolve disputes regarding “*methods of safely exchanging the child/ren including transportation.*” The committee developing the intervention in a local Oregon court specifically deleted a reference to “supervised visitation” based upon the belief that such determinations would amount to a substantial change to the ordered parenting plan which would require filing of a request for modification to implement.



appear and shall be available to testify” at any court hearing upon reasonable notice.

- **California.** The appointment order used in many jurisdictions<sup>45</sup> addresses confidentiality by stating the process is non-confidential. With regard to testimony, the order states the following, “*The special master may not testify without the express agreement of the special master and the parties.*”

- **Colorado.** The proposed Colorado legislation would have provided that “*[a]ny statements made by the parties, their minor or dependent children, any witnesses, or any professionals involved with the care of the minor or dependent children to the Parenting Coordinator shall not be confidential.*” This is consistent with the usual practice in Colorado.

- **Massachusetts.** The proposed Massachusetts legislation provides that “*a client shall have the privilege of refusing to disclose and of preventing a parent coordinator from disclosing, any communications, opinions, observations, work product prepared by or case files held by the parenting coordinator.*” Exceptions to the privilege shall apply to the PC’s “*written decision and any written memoranda in support of his or her decision which is the subject of the litigation or any written decision or memoranda that has been previously filed with the court.*”

- **North Carolina.** The order appointing a PC specifies that “[t]he Court is the PC’s client and no communications with the PC are confidential or privileged. However, the Parent Coordinator shall not disclose any information about the children or the parties except to the extent necessary to fulfill the duties and responsibilities imposed by this order.” PC contracts with parents also specify that communications are not confidential. The court rules require that the PC maintain records of each meeting with a parent or parents and that those records may be subpoenaed, but only by the presiding judge. The judge performs an in-camera inspection of the records and determines whether to release them to the parties. Likewise, only the presiding judge may subpoena the PC to appear and testify.

- **Ohio.** The members of the Parenting Coordinator Pilot Project in Columbus, Ohio, who are licensed mental health professionals, have expressed concerns over the fact that the non-confidentiality aspect of the standard PC process is incompatible with the confidentiality standard of their state licensing boards. They fear that acting as a PC could expose them to potential complaints being filed against them before their licensing boards by an angry parent who is dissatisfied with the action of the PC, because of some perceived breach of the licensing board’s confidentiality standard. Consequently, the Columbus PC Standards include the statement, “*Performing the work of a Parenting Coordinator shall not be considered the practice of any licensed profession.*” However, some of the attorneys are concerned that such a statement may cause them problems regarding coverage by their legal malpractice insurance carriers. (Note: This problem has not been resolved at press time.)

- **Oklahoma.** The Oklahoma statute flatly states that “*[a]ll communication between the*

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<sup>45</sup>See Footnote 26 above.

*parties and the parenting coordinator shall not be confidential.*<sup>46</sup>

• **Oregon.** In Oregon, the model PC order states “[t]here is no confidentiality concerning communications with the Coordinator. As required by the court, the Coordinator may communicate with custody evaluators, screeners, assessors, or other individuals investigating the issues.” Parties wishing the PC to testify at a hearing other than to report on findings is required to deposit in advance “a reasonable fee to cover the hourly rate of the Coordinator.” The Oregon order also informs the parents that the PC may be required by law to report child abuse, elder abuse, and threats of abuse against another person.

• **Vermont.** The family court rules in Vermont specify that parent coordination “is a non-confidential, child-centered process. The Parent Coordinator shall assist the parties in developing a parenting plan for the children.”

**b. *Ex Parte Communications.*** Most established PC processes provide that parents may communicate *ex parte* with the PC. Some jurisdictions permit the PC to communicate *ex parte* with attorneys<sup>47</sup> and others do not. The support and alliance of a parties’ attorney is often considered crucial for the PC process to succeed.<sup>48</sup> Some courts permit the PC, by agreement or court order, to immediately communicate with the court in emergency situations, providing the judge with his/her recommendations, which may result in an interim order. Other jurisdictions flatly prohibit such communication.

• **Arizona, Maricopa County.** The order appointing the Family Court Advisor in Maricopa County, Arizona states that the FCA cannot communicate *ex parte* with attorneys except regarding scheduling matters. Maricopa County, Arizona also permits the PC, by agreement or court order, to immediately communicate with the court in emergency situations, providing the judge with his/her recommendations, which may result in an interim order.<sup>49</sup>

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<sup>46</sup>43 O.S. Section 120.3(E).

<sup>47</sup>See also, Baris, et al., Working with High Conflict Families of Divorce: A guide for Professionals. New Jersey: Jason Aronson Publishers, 2000, p. 101-107: “Sometimes the most valuable intervention a PC can effect is...facilitating communication between or among the existing professionals,” and the authors discuss systems interventions with mental health, social, and legal professionals and services.

<sup>48</sup>Before Jennifer Barker, Parent Coordination Consultant to the Vermont Family Court Mediation Program, will even meet with the parents, she will call their attorneys if they have them, to explain the PC process and determine whether they will be supportive of their client’s participation. If not, she often will not even attempt parent coordination with the couple. Conversation, 12/18/00.

<sup>49</sup>The Maricopa County, Arizona FCA order provides that the family court advisor may deal with the need for “time sensitive decisions which require immediate action and resolution” by either: (1) writing the assigned judge with a copy to parents/counsel with a recommendation for an interim order, or (2) if the assigned judge is not immediately available for conference or hearing, the FCA has authority to “make a binding decision ... ‘which would be made without prejudice and without precedent as to any future action or procedure for any other dispute.’” An objection does not stay such an interim order unless the Court orders otherwise. The FCA must “document in writing in his/her case file all of the facts, procedure implementation, decision made and decision implementation as to each such dispute” and disseminate “to the parties, counsel or the Court upon request.” Examples of such situations are outlined in the order as being: (1) Temporarily changing exchange day, time or place; (2) Attendance at or participation in a special event or occasion by the child or a parent; (3) Responsibility for care of a sick child or accompaniment to medical treatment; A special non-recurring need of the child or a parent.

• **California.** With regard to ex-parte communication, the appointment order<sup>50</sup> permits, but discourages ex-parte communication with attorneys and parents (particularly if decisions are made on the basis of those communications) and prohibits ex-parte communication with the judge.

• **North Carolina.** The Appointment Order provides that “[a]lthough no attorney, [or guardian *ad litem*] may initiate *ex parte* communication with the PC unless all parties and attorneys agree to such communication, the PC shall have the authority to contact any of these persons directly at his or her discretion. Any written communication sent to the Parent Coordinator by an attorney [or guardian *ad litem*] shall be copied to all parties.” Communications between the judge and the PC are prohibited.

• **Oklahoma.** The Oklahoma statute does not allow ex parte communications with the court.<sup>51</sup> The form of the order for Parenting Coordinators adopted by local rule in Tulsa, Oklahoma, allows for ex parte communication with others other than the court.

• **Oregon.** The model PC order provides that “[*t*]he parents and their attorneys, if they are represented, may communicate with the Coordinator *ex parte* (without the other parent present). This applies to oral communications and any written documentation or communication submitted to the Coordinator. The Coordinator may communicate *ex parte* (alone) with the parents and their attorneys, and other professionals involved in the case. This applies to both written and oral communications. The Coordinator may talk with each parent without the presence of either counsel. The Coordinator shall not communicate *ex parte* with the judge assigned to the case.”

## 7. Access to Non-Parties, Children and Privileged Information

The PC model typically provides access to any persons involved with family members, including school officials, physicians, mental health providers, guardians *ad litem*, custody evaluators, or other professionals involved with the family. Almost always, the PC meets with the children: “[a] PC should always meet with the children or receive input from a therapist who knows the children well and meets with them on an ongoing basis.” It is clearly stated that the PC is not the child’s therapist, however.<sup>52</sup>

The PC model also typically provides access to all orders and pleadings filed in the case, as well as school and medical records of the children, and reports of psychological testings or evaluations which have been performed. The standard stipulation in many California jurisdictions<sup>53</sup> provides detailed language to provide the special master with access to various professionals who might be involved with the family currently or in the past, and any other information the special master might find useful to work on the case. In addition, there are provisions to allow the special master to hire a consultant to assist with their work on an issue. For example, if there is a dispute

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<sup>50</sup>See Footnote 26 above.

<sup>51</sup>See Oklahoma Statutes 43 OS 120.4 (A), available on-line at the Oklahoma Supreme Courts Network website: <http://www.oscn.net>

<sup>52</sup>Baris, et al., Working with High Conflict Families of Divorce: A guide for Professionals. New Jersey: Jason Aronson Publishers, 2000, p. 82.

<sup>53</sup>See Footnote 26 above.

about treatment for a medical issue with a child, the special master can appoint a specialist (whose fees are paid by the parents) to assist in making a decision about that issue.

Parties are almost always requested to provide releases and consents to permit this level of investigation, and stipulations or orders appointing the PC almost uniformly contain a provision that the parties agree to execute them. In Oregon, the committee devising the PC model opted for the following language instead of the typical release language: “*Within 15 calendar days of the date of this order, the parents shall provide all records, documentation and information requested by the parent referee that is relevant to the matters being decided with the exception of materials subject to attorney-client privilege.*” This language was viewed as encompassing necessary releases.

• **North Carolina.** The Order Appointing Parent Coordinator provides that the PC shall have the authority to talk to the children, if necessary, and to include them, the attorneys, and/or the guardian *ad litem* in sessions with the parents. Access to privileged information is addressed in the Appointment Order which provides that the PC is entitled to information of any type concerning the children or either party, and requires that each party execute any releases necessary to allow the PC to access that information.

## **8. Referral for Third-Party Services**

The PC will often find that the parent(s) or children require adjunct services to be provided by third parties, including but not limited to physical or psychological examinations and assessments, psychotherapy, alcohol and drug monitoring/testing, the appointment of a guardian *ad litem* for the child, or supervised visitation/parenting time. In *Maricopa County, Arizona*, the family court advisor may request that the court order the parties or their children to these services. In Vermont, language in the parties’ agreement authorizes the PC to “assist with referrals to services in the community that are needed in order to implement the plans. However, while technically possessing the power to refer, doing so often does not work well without the authority of the court behind the referral.”<sup>54</sup>

• **California.** In California, the Santa Clara county model allows the special master authority in “*determining and ordering appropriate medical, mental health and counseling treatment (including psychotherapy, substance abuse, and domestic violence counseling, batterers intervention programs and parenting classes) for the child(ren) and the parents; the special master shall designate whether any ordered counseling is or is not confidential.*” In addition, the special master can order psychological testing for either the minor child(ren) or parents.

• **North Carolina.** The PC’s fee may include a specific cost for “...consultation with an experienced mental health professional.”

• **Oklahoma.** In Oklahoma, referral to third-party services comes under the “recommendation” power of the PC. These are handled differently in that the recommendations are not immediately binding upon the parties. The recommendation is made to the court, and it follows through the process of becoming a court order if no one objects and the court signs a minute order

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<sup>54</sup>Per conversation with Jennifer Barker, Parent Coordination Consultant to the Vermont Family Court Mediation Program, 12/18/00.

accordingly.<sup>55</sup>

## **9. Special Considerations for Families with Allegations of Domestic Violence**

Many child custody evaluators do not pay enough attention to the special needs of families with violence.<sup>56</sup> This has led California to enact Rules of Court<sup>57</sup> defining training requirements and procedures for families in which there are allegations and considerations of domestic violence. Currently, California is the only state that has mandated training and education in domestic violence for court-appointed child custody evaluators. Among other things, these rules require all court-appointed child-custody evaluators to have an initial 12 hours of training in domestic violence and an additional 4 hours of training in an annual update.

The Courts have also been struggling with the issue of how to deal with domestic violence in family law matters. In 1994, the National Council of Juvenile and Family Court Judges published the Model Code on Domestic and Family Violence<sup>58</sup> which recommended "...a rebuttable presumption that "...it is in the best interests of the child to reside with the parent who is not a perpetrator of domestic violence..." To date, approximately ½ of the states have enacted similar legislation and most states now require courts to consider domestic violence as a factor in deciding the best interests of children.

The Model Code also includes recommendations in Sections 405 and 406 regarding safe visitation in cases involving domestic violence and in Sections 407 and 408 A and B for the mediation of child custody disputes in such cases.

In 2000, the Symposium on Standards of Practice<sup>59</sup> promulgated the "Model Standards of Practice for Divorce and Family Mediation." Among other things, these Standards state, "A family mediator shall recognize a family situation involving domestic abuse and take appropriate steps to shape the mediation process accordingly."<sup>60</sup> California Rule of Court 5.215 and these standards both point out, among other things, that mediators must recognize that all domestic disputes are not appropriate for mediation, in particular those in which there is domestic violence in the family. If mediation is to take place, the mediator is to screen for domestic violence, take measures to ensure the safety of all participants in domestic violence situations, and facilitate the participants' formulation of a parenting plan that protects their and the children's physical safety and psychological well-being.

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<sup>55</sup>See form order adopted by local court rule in Tulsa, Oklahoma at <http://www.familiesintransition.com>.

<sup>56</sup>Ackerman, M. & Ackerman, M. (1996), Child Custody Evaluation Practices: A 1996 Survey of Psychologists. *Family Law Quarterly*, 30:3, 565-586.

<sup>57</sup>See e.g., California Rule of Court 5.215, Domestic violence protocol for Family Court Services and Rule 5.230. Domestic violence training standards for court-appointed child custody investigators and evaluators.

<sup>58</sup> (Section 401, Model Code on Domestic and Family Violence, NCJFCJ, 1994)

<sup>59</sup>An interdisciplinary group of organizations, spearheaded by the AFCC, the Family Law Section of the American Bar Association, and the National Council of Dispute Resolution Organizations promulgated these standards.

<sup>60</sup> *Ibid.*, Standard X

It is well known<sup>61</sup> that, while the standard custody and visitation dispute is designed to promote the child's relationships with both parents and court hearings are designed to help families reduce hostilities and develop parenting schedules, the courts need to be concerned first with issues of lethality and safety for families in which there is violence. It is also understood that when there is an assessment in non-violent families, this generally includes an assessment of the children's needs and parenting capacities and abilities, but when there is violence, the assessment must include an understanding of how the violence has impacted the children, a safety plan, the level of empathy and understanding of the causes of the violence and its role in the family, as well as the other factors.

Parenting Coordination is a service for high conflict domestic relations cases, which clearly encompasses cases in which there is domestic violence, including not only physical abuse, but also the domineering, intimidating behavior that may accompany it.

By the time parents become involved with a PC, the presence of violence in their relationship should have been litigated, or at least identified as a problem by a lawyer, custody evaluator, or other professional, and it should have been highlighted in the initial PC referral or appointment order. Because of the secrecy and shame associated with abuse, however, it may not have been previously revealed, and so the PC should routinely screen for the presence of domestic violence and assess its severity, its effects on the parties and their children, and its associated risks.

A few states and communities have spoken specifically to parenting coordination and domestic violence:

- **California.** In Santa Clara County, California's protocol authorizes the PC to order parents to participate in "appropriate...domestic violence counseling ...[and] batterers intervention programs..."; and (See California, p. 20)

- **Oklahoma.** In Oklahoma's statute defines high conflict to include, inter alia, "...physical aggression or threats of physical aggression..." (See Oklahoma, pp. 8-9)

- **Vermont.** The Vermont Family Court Mediation Program/PC Protocols (April 1998) refer to parenting coordination as a "...process for parents for whom mediation is inappropriate due to high level of conflict or domestic abuse in the relationship," and speaks of the development of "safe...plans..." (See footnote 54) Vermont's training requirements for PC's include "...24 hours of domestic and substance abuse training, basic and advanced..." (See Vermont, p. 27)

The delivery of parenting coordination services, as with mediation, may need to be different in cases with domestic violence. Meeting separately with each party will likely be more appropriate. Referrals to other services will perhaps be necessary, e.g., a therapist with domestic violence expertise, group therapy for victims, or a program for abusive partners. Safety for the adults, the children, and the PC will be an important consideration, and safety planning should be facilitated by the PC or by an advocate for domestic violence victims. Visitation exchanges must also be arranged with the safety of all parties in mind. If the PC has reason to believe that the safety of a party (or child) is at imminent risk due to a credible threat by the other party, the duty arises to inform the potential victim(s). Substance abuse or mental illness may also require interventions by the PC to both correct the problem and to protect the children and the non-offending parent.

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<sup>61</sup>See e.g. presentations by Philip M. Stahl, Ph.D. at various judicial trainings.

Families in which there is violence are more likely to have been involved in criminal and juvenile cases and in domestic violence protective order proceedings, and the PC will want access to the pleadings, orders, and other significant documentation from any such cases.

There may occasionally be cases in which a report to child protective services will be required because a parent, or the current partner of a parent, has endangered the safety of a child. Where domestic violence is the threat to safety, the PC may want to consult with someone who has expertise regarding both domestic violence and child welfare. As a general rule in such cases, the object should not be to place the child in foster care, but in the custody of the non-offending parent or household, with appropriate protections to assure the child's safety.

With the above in mind, this Task Force urges that all Parenting Coordinators take sufficient steps to ensure that they have adequate training in domestic violence and that the work with families in which there are concerns for violence is undertaken cautiously and with an awareness of these emerging issues.

## **10. PC Proceedings**

The PC is typically given wide latitude in how sessions with the family members are conducted, and these are commonly described as "informal." Initial meetings can be used for discussing the process and conditions of parent coordination, execution of a stipulation to the process, and to sign releases for information.<sup>62</sup> Usually, the PC is not required to make a record of his/her proceedings although some jurisdictions permit the PC to videotape or record proceedings with parents in his/her discretion (Maricopa County, Arizona). Meetings with parents may be scheduled either separately or together. If a PC detects use of alcohol or drugs, the meeting may be canceled. Meetings may also be held by phone conference. The PC almost always meets with the children.

In California, the standard appointment order has a section on "procedures" which addresses the special master's requirement to provide a written statement of policies and procedures (informed consent), general procedures for working with issues, policies about hearings, interviews, decisions (timing), and child abuse reporting requirements.<sup>63</sup>

• **North Carolina.** In practice, the PC generally meets separately with each parent. If the parents agree to any fundamental change in the order, the PC must send the agreement to the parties' attorneys.

## **11. PC Compensation**

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<sup>62</sup> A North Carolina local court rule provides that, prior to the PC appointment, the court conducts an "appointment conference" where the parties, their attorneys, child custody advocates and the proposed PC are present. At the Appt Conf, "Court shall: (a) explain the PC's role, authority, and responsibilities; (b) determine who will provide what info to the PC; (c) provide for financial arrangements, establish the proportionate share of the PC's fee to be paid by each party and authorize the PC to charge any party separately for individual contacts made necessary by that party's behavior; (d) inform the participants of the Rules regarding communication among themselves and with the Court; and (e.) enter the Appointment Order."

<sup>63</sup>See Footnote 26 above.

Typically, the parties share the expense of the PC in proportions initially set by agreement or by the court, with the PC empowered to alter this percentage where one parent abuses the process or unreasonably consumes more of the PC's time. The proportion paid by each parent is otherwise based upon income and ability to pay. Many PCs are authorized to request payment in advance since parents dissatisfied with the process may decide to unilaterally withhold payment, leaving the PC with the decision as to whether to continue or not, a particularly difficult choice where the PC believes the children are being benefitted by the process.

PC fee rates can range from \$75 to \$275. This fee typically includes all PC services including:

- joint sessions (if seen individually, the PC may charge a single parent for the sole session)
- interview time (e.g., of the children)
- investigation time (e.g., of court or school records)
- collateral time (e.g., conferring with attorneys, physicians, counselors)
- home visits
- travel expenses and time
- preparation of reports, agreements, or proposed orders
- court appearances (if a party requests the testimony of a PC at a hearing, the PC may require that party to pay an advance fee up front)<sup>64</sup>

• **California.** Understanding that fee issues can quickly compromise the effectiveness of the parent coordinator role in a case, the California appointment order provides a detailed specification of how charges and costs are handled, which includes any and all potential services the special master may provide. The order can provide for a retainer clause (usually 15 hours), which must be replenished when depleted, or a deposit, which is not billed against but protects against a parent's non-payment during a period when the special master would need to finish work in order to protect the child's best interests. The order also provides for easy access to the court by the special master if fee disputes arise during the course of work on the case.

• **North Carolina.** The rules provide that the PC shall be entitled to reasonable compensation for services rendered and to a reasonable retainer. They further state that "[t]he Judge may make the appointment contingent upon the parties' payment of a specific fee to the PC, which shall be allocated between the parties proportionate to their combined incomes or divided equally, whichever the Court determines to be fair and equitable." The PC is directed not to begin the process until the fee has been paid. PCs are authorized to charge any party separately for individual contacts made necessary by that party's behavior. These are all issues that must be addressed at the "appointment conference." Either party of the PC may request a hearing in the event of a fee dispute.

• **Oklahoma.** The Oklahoma statute makes conditions on the appointment. No PC shall be appointed unless the court finds the parties have the means to pay the fees. The state of Oklahoma

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<sup>64</sup> E.g., in Oregon, the PC order provides: "*If either parent wishes the Coordinator to testify at a hearing other than to give a report on findings, the parent will be required to deposit in advance a reasonable fee to cover the hourly rate of the Coordinator.*"



shall assume no financial responsibility for the payment of the fees. In cases of hardship, the court, if feasible, may appoint a PC to serve on a volunteer basis.<sup>65</sup>

• **Oregon.** One jurisdiction in Oregon has a written subsidy structure in place but it has not been implemented yet. The subsidy would be for income-qualified parents (based upon a percentage of the Federal Poverty Guidelines). Parents would be required to pay a portion of the PC's hourly fee between \$5 and \$15 to "...[ensure] that the parent has an interest in using the referee's time wisely...." The subsidy is limited to no more than 20 hours per family to be used within a three year period.

• **Vermont.** Only one known jurisdiction, Vermont, currently provides a subsidy to parents to fund the PC process. The Vermont legislature has provided monies to the Court Administrator's Office through the Vermont Family Court Mediation Program, and some of these funds are used to subsidize parent coordination. A fee is charged on a sliding fee scale and parents can apply for a court stipend. Each parent pays 7.5 hours of their share of the fee in advance. The PC process in Vermont is limited to 20 hours total, including time spent talking with third parties and investigating.

## 12. PC Qualifications and Training

Jurisdictions differ in the formality and extent of education and training required for the PC position, e.g., some required possession of a social science or mental health degree; others provided that paraprofessionals, such as court staff, could fulfill the function provided adequate training was had. In many jurisdictions, attorneys serve as PCs. Areas of required expertise include:

- conflict resolution theory and techniques, including mediation
- child development and psychology, including adjustment to divorce
- family dynamics, family systems theory
- domestic relations law
- familiarity with the dynamics of domestic violence and associated safety and intervention considerations
- parenting education and techniques.

• **California.** Santa Clara County in California provides local rules in addition to the standard order of appointment which provide that "special masters" must meet the same qualifications as those required of a supervising or associate counselor of Family Court Services. The rules provide additional training requirements in relevant content domains (e.g., the family code, domestic violence, and local court protocols). Local professionals have sponsored three full-day training conferences for special masters which are "highly recommended" for professionals who seek appointments in the county.

• **Colorado.** Most PC are either attorneys with guardian *ad litem* experience, mental health professionals with experience in conducting parental responsibility (custody) evaluations, or mediators with similar backgrounds. The proposed legislation in Colorado would have provided that the PC need not be an attorney but must possess training or experience in the areas of child

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<sup>65</sup>See Oklahoma Statutes 43 OS 120.5(A), available on-line at the Oklahoma Supreme Courts Network website: <http://www.oscn.net>.

development and psychology, child custody issues, parenting time schedules, mediation, domestic relations law, and parenting techniques.

- **North Carolina.** PCs are required to have a Masters or PhD in psychology, law, social work, counseling, medicine, or related degrees; no less than five years of related professional post-degree experience; and a license in their area of practice. They must also have a total of at least 24 hours of training on the stages of child development, dynamics of high conflict families, stages and effects of divorce, problem-solving techniques, and relevant divorce law issues. Participation in local PC training events is mandatory and completion of a 40 hour approved mediation course will count as 12 hours of this requirement. PCs are also expected “to... participate in an ongoing seminar which will provide continuing education, group discussion, and peer review and support on a monthly basis.”

- **Ohio.** While attempting to create and implement a new Parenting Coordinator Pilot Project in Columbus, Ohio, without support or guidance from any state statute or court rule, the organizing group of volunteer attorneys and mental health professionals discovered that establishing initial minimum levels of competency and training is one of the most difficult subjects to handle. The problem is that after they created their initial standards, they discovered that none of the organizers could meet those standards without some additional training in selected subjects. For example, generally, attorneys need training regarding the developmental levels of children, and mental health professionals need training on family law and writing enforceable court orders. Consequently, they were forced to develop some unique, customized training courses to meet the particular deficiencies of their group. In order to get the program started without a long delay for complete training, they are planning to try matching up an attorney and mental health professional with complementing skills to perform the PC functions as a team, until everyone is trained and qualified to operate as a solo PC.

- **Oklahoma.** The Oklahoma statute allows each judicial district to adopt its own local rules governing the qualifications of the PC.<sup>66</sup> In the local rule adopted by Tulsa, Oklahoma, if the parties do not agree to a licensed attorney or licensed mental health professional as a PC, then the PC must have the following qualifications: A masters degree in mental health or behavioral science field; a licensed mental health professional; trained in disorders, child development and family law; be a mediator under Oklahoma law; and have practiced five years. Also, there is a Quality Assurance Panel, consisting of 12 members: 3 judiciary; 3 family law attorneys; 3 licensed mental health professionals; and 3 lay persons, which assures the integrity and quality of the PC program and process.

- **Oregon.** Concerns about too narrowly drawing the pool of potential PCs resulted in a local rule providing that the PC must be a “mental health professional” (defined as someone with a Masters or Ph.D. degree in psychology, counseling or social work, or equivalent training, experience and education, or an M.D. with psychiatric specialization), attorney, court-qualified mediator, or court staff personnel with specialized training. Specialized training for PCs must include domestic violence training. A PC with culturally unique clients has “...an affirmative duty to educate himself

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<sup>66</sup>See Oklahoma Statutes 43 OS 120.6(A), available on-line at the Oklahoma Supreme Courts Network website: <http://www.oscn.net>.

or herself about the norms and values of that culture prior to conducting any substantive work on the case."<sup>67</sup>

• **Vermont.** The requirements for PCs in Vermont are more detailed and include 160 hours of training, including:

- 60 hours of mediation training
- 24 hours of domestic and substance abuse training, basic and advanced
- 20 hours of family law and court procedures
- 20 hours Vermont Family Law and Court Procedures
- 36 hours of family dynamics and child development
- 12 hours of PC training, including “shadowing” a minimum of two cases
- 8 hours of document writing and giving testimony in court

The required PC training “may be gained in the following ways: (i) training provided by the Vermont Family Court Mediation Program; (ii) individual consultation with the PC Program Consultant; (iii) regularly-scheduled PC consultation meetings; and (iv) shadowing a program contracted parent coordinator for a minimum of two cases. These hours may be completed after being accepted into the program.”<sup>68</sup>

### **13. Submission and Objection to PC Recommendations/Reports**

• **Arizona, Maricopa County.** The Family Court Advisor is required to submit, sixty (60) days prior to the expiration of his/her appointment, a summary of the history of the services rendered, decisions reached, recommendations made, and any recommendations for future involvement of the Family Court Advisor. The FCA must also document all emergency or sensitive issues providing the facts, the procedure(s) implemented, the decision(s) made and how these decisions were implemented. The FCA is not required to make a record of his/her proceedings. A party may, at their option and expense and with reasonable notice, make a record of any information offered. The original report, recommendation, and order/minute entry are routed to the legal file and copies mailed to all parties by the Clerk.

• **California.** Decisions made by the special master are filed as an order of the court, are immediately binding, and subject to review and modification by the court (the objecting party must file a motion to bring their objection to the court). A detailed procedure, with timelines and procedural requirements for filing objections is part of the appointment order. The standard of review varies according the impact of the decision on the child’s relationship with their parents (ranging from an abuse of discretion criteria to a *de novo* hearing of the issue). The objecting party can request a written statement of decision to assist the supervising judicial officer in their review of the decision.

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<sup>67</sup>Marion County, Oregon, Supplemental Local Rule 8.015(2)(d)(iii).

<sup>68</sup>“Minimum Training and Experience Requirements for Contract Parent Coordinators,” provided by Susan Fay, Director, Vermont Family Court Mediation Program, April 29, 2002.

• **Colorado.** In Colorado, arbitration of children’s issues is allowed by statute.<sup>69</sup> However, all arbitration awards (decisions) must be in writing. PCs in Colorado who have arbitration authority must submit all decisions in writing to the parties. Such decisions are effective when issued and may be filed with the Court for confirmation. A party who objects to the decision may seek judicial review of the decision. A disincentive exists for a party to seek review - if that party loses and the court accepts the arbitrator’s decision, the losing party pays all the attorneys fees, costs of the other party, and the arbitrator’s fees incurred in the review.

• **Massachusetts.** The proposed legislation allows that “*all binding recommendations of the Parenting Coordinator shall be subjected to a request for a de novo judicial review.*”

• **North Carolina.** One of the functions of the PC is to “...provide attorneys and any unrepresented party with written summaries of developments in the case...” And the PC is obligated to report to the Court, the parties, their attorneys, and a guardian *ad litem* if he or she determines that the existing custody order is not in the best interest of the child, or if there are issues in the case which the PC is not qualified to address or resolve. There are no other reporting requirements, although in practice there is frequent communication between the PC and the parties and their attorneys.

• **Oklahoma.** A PC’s decision is binding on the parties until further order of the court. The decision is filed with the court within twenty (20) days with copies provided to the parties or their counsel. Either party has ten (10) days to object to the decision. Responses to objections are due within ten (10) days. The court reviews the objections and makes appropriate orders.<sup>70</sup> Under the local court rule adopted in Tulsa, Oklahoma, there is a distinction between decisions and recommendations. Decisions are allowed by statute and are immediately binding. Recommendations are a second level of issues which the PC is welcome to address, but has no authority to bind the parties. Those recommendations are made to the court and any objections are made. The recommendation is binding on the parties only after the court adopts it in a minute order.

• **Oregon.** One local jurisdiction determined that the PC need not file every decision made in writing with the court since the PC would be dealing only with “implementation” issues, of which there may be many for high conflict parents; it would be too timely and expensive to require such filings “for every little thing.” While the PC is required to make a decision within 10 days and put it into writing, it is sent only to the parents and attorneys. “Unless the decision changes the parenting plan” [as opposed to merely implementing it], “the decision shall not be filed with the court.” The PC’s decisions are effective when communicated to each parent, either orally if both parents are present, or in writing. The parties may request judicial review of the PC's decision by filing a motion with the court within ten (10) days of the date they received notice of the PC's decision. If an appropriate motion is filed, the Court shall have jurisdiction to determine whether the PC's decision remains in effect or is suspended pending the hearing. However, the PC's decision shall remain in effect unless specifically set aside or modified by Court order. Prior to the scheduled hearing, the parents and counsel, if requested by the parents, shall meet and confer with the PC to attempt to resolve the objections. In the event that the issues are resolved, a written stipulation shall be prepared

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<sup>69</sup>See Colorado Revised Statutes 14-10-128.5.

<sup>70</sup>See Oklahoma Statutes 43 OS 120.4, available on-line at the Oklahoma Supreme Courts Network website: <http://www.oscn.net>.

by the PC or counsel and submitted to the Court prior to the hearing. If no timely motion is filed, the PC's decision shall be final.

• **Vermont.** The PC drafts a stipulation for review by each parent when the parties agree. The signed stipulation is filed with the family court prior to the scheduled status conference. It is the option of the judge to review and order the plan stipulated by the parties when received, or review it at the scheduled status conference. When parents are unable to agree, the PC submits a report to the court containing a narrative summary of the PC's meetings with parents, children, and any other persons with whom the PC has consulted, and detailed recommendations for a parent/child contact plan. The report is filed with the Court and mailed to the parties at least 14 days prior to the scheduled status conference. Parties have 10 days to file written objections. Objectors appear at a status conference. In the interim, the court may issue a temporary order for parent-child contact based upon the recommendations of the PC.

#### **14. Judicial Review of PC Decisions**

The common law doctrine of *parents patriae*, literally “parent of the country,” is generally cited for the proposition that the court may not absolutely delegate decision-making authority regarding children to third parties. Thus, the court will always retain some type of review of third party decisions. Even stipulations between parents are subject to judicial review before being accepted as court orders. This doctrine applies to the decisions of the PC.

The simplest outcome of work with the PC is a stipulated agreement between the parents, which may be memorialized by the PC or by one of the party's attorneys, if they have one. The process becomes more complex where the parties do not agree.

Where the parties have agreed to the appointment of the PC, and have further agreed that the PC can arbitrate those disputed issues which cannot be resolved, the PC assumes an arbiter's role where agreement cannot be reached. The PC is then empowered to render a final decision which cannot be overturned by the court except for abuse of discretion, acting beyond the scope of authority, wrongdoing or fraud or other reason allowed in statutes which specifically authorize arbitration in family matters. In this version of the model, the PC performs both mediation and arbitration (conciliation and judging) functions.

In the more typical application of the PC model, the PC files either a written report or written recommendations with the court, suggesting appropriate parenting time provisions for the family. In fact, in Colorado such a PC is usually called a “med-arbiter” since there is no statutory authority for parenting coordination while there is for mediation-arbitration. The statute provides for “de novo review” of arbitration decisions in parental responsibility and child support matters.<sup>71</sup>

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<sup>71</sup>Colorado Revised Statutes 14-10-128.5. Appointment of arbitrator - de novo review of award. (1) With the consent of all parties, the court may appoint an arbitrator to resolve disputes between the parties concerning the parties' minor or dependent children, including but not limited to parenting time, nonrecurring adjustments to child support, and disputed parental decisions. Notwithstanding any other provision of law to the contrary, all awards entered by an arbitrator appointed pursuant to this section shall be in writing. The arbitrator's award shall be effective immediately upon entry and shall continue in effect until vacated by the arbitrator pursuant to section 13-22-214, C.R.S., modified or corrected by the arbitrator pursuant to section 13-22-215, C.R.S., or modified by the court pursuant to a de novo review under subsection (2) of this section.

In this way the PC process is very unlike confidential mediation, where failure to agree means the parties proceed to the next level of litigation and the court must determine issues without the benefit of the mediator's impressions and suggestions for the family. This may be a major attraction of the PC model, for both the courts and the parents. The endeavors of the PC, as well as the expense of working with him/her to the parents, are not "lost." The PC's knowledge of the family's dynamics, the children's needs, the source of their ongoing conflict, and his/her suggestions for what could work for this family can be shared with the parents' attorneys and the court.

- **Arizona, Maricopa County.** An example of a detailed process for judicial review can be found in the sample Family Court Advisor Order used in *Maricopa County, Arizona*. The Family Court Advisor (FCA) submits, in "report format," a summary of the services rendered, decisions reached, and recommendations made, including those for future involvement of the Family Court Advisor, sixty (60) days before his/her appointment is to expire. The division/judge reviewing the FCA's report then enters an order/minute entry which: (1) immediately adopts/modifies the recommendations "based upon the finding that circumstances exist making the immediate entry of the order necessary," becoming final after 25 days unless a written objection is filed; or (2) adopts or modifies the recommendations in an order which does not become effective for 25 days, within which time a written objection can be filed; or (3) not adopting or modifying the recommendations; or (4) making other orders, referring back to the FCA, or setting the matter for an evidentiary hearing on the matter. The filing of an objection does not automatically stay an interim order.

- **North Carolina.** Judicial review is available by motion of either party, the guardian *ad litem*, or the PC.

- **Oregon.** Concerns that the PC would be overburdened by having to file repeated documentation with the court each time an implementation issue was resolved, lead to the provision in a proposed order that the PC's written decisions need not be filed with the court unless they change the parenting plan. The PC's decisions are effective when communicated to each parent, either orally if both parents are present, or in writing. The parties may request judicial review of the PC's decision by filing a motion with the court within ten (10) days of the date they received notice. If no timely motion is filed, the PC'S decision shall be final. The PC's decision remains in effect pending the hearing unless specifically set aside or modified by Court order. The parents are to meet with the PC prior to the scheduled hearing to attempt to resolve the objections.

- **Vermont.** In Vermont, proposed family court rules regarding PCs provide that the PC's report shall be filed with the court 14 days prior to a scheduled status conference and is to include a narrative summary of the PC's meetings with parents, child(ren), and any other persons with whom the PC has consulted, and detailed recommendations for a parent/child contact plan. Objections must be made within 10 (ten) days of filing of the report and, if not resolved at the status conference, "the

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(2) Any party may apply to have the arbitrator's award vacated, modified, or corrected pursuant to the "Uniform Arbitration Act of 1975", part 2 of article 22 of title 13, C.R.S., or may move the court to modify the arbitrator's award pursuant to a de novo review of such award. In circumstances in which a party moves for a de novo review by the court, the court shall order the nonprevailing party to pay the fees and costs of the prevailing party and the fees of the arbitrator incurred in responding to the application or motion unless the court finds that it would be manifestly unjust.

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matter shall be set for a contested hearing.” In the interim, the court may issue a temporary order for parent child contact based upon the recommendations of the PC.<sup>72</sup>

## 15. Immunity

In most states, where the PC is appointed pursuant to court order, he/she receives quasi-judicial immunity. However, this does not necessarily prevent the filing of individual complaints with professional licensing boards. Garrity and Baris (1994) warn that a parent intent on impeding the relationship between their children and a targeted parent in situations of alignment/alienation may even threaten to, or actually, file a grievance against the PC. Thus, the PC must be a person “of professional firmness and tact, able to withstand threats or allegations of the dangers presented.”<sup>73</sup>

- **Arizona, Maricopa County.** The FCA order explicitly provides that he/she “acts as a quasi-judicial officer ... and has limited immunity consistent with Arizona case law...” Alleged improprieties or unethical conduct “shall be brought to the attention of the court in writing.”

- **California.** The California appointment order includes a paragraph on “Quasi-Judicial Immunity” which states, “*The special master is an Officer of the Court, acting as a private judge for the parties to this action, to the extent of this stipulation. The special master has quasi-judicial immunity. The special master cannot be sued based on his/her actions in this matter. The special master cannot be compelled to testify without the express agreement of the special master.*”<sup>74</sup>

- **Colorado.** Since no statutory authority exists for the PC, each judge or judicial district must include a statement about “quasi-judicial” authority in the order appointing the PC. Some judges do this routinely; other judicial districts are not in agreement about their authority to do so.

- **Massachusetts.** The proposed legislation defines the Parenting Coordinator as a quasi-judicial officer “*with continuing authority to act during the designated term of service.*”

- **North Carolina.** There is no statutory immunity. The local rules, however, do provide that the PC “...is appointed as an agent of the Court...” and “...is not liable for decisions made or information provided while serving in the capacity of PC.”

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<sup>72</sup>Vermont’s “Case Management Flow for Parent Coordination,” December 2001, supports its policy of final and interim orders as follows: “High conflict families need the structure of a court order to guide them pending further dispute resolution procedures,” and “[t]he absence of a court order heightens the risks of exposure to parental conflict or violence.”

<sup>73</sup>See Footnote 5. Garrity, C.B. and Baris, M.A. (1994) *Caught in the Middle: Protecting the children of High Conflict Divorce*, at pages 85-86.

<sup>74</sup>Paragraph B., Stipulation and Order Appointing Special Master, see Baris and Coates, PP. 198-211; See Footnote 26 above.

• **Oklahoma.** Case law indicates that when a court appoints a psychologist or guardian *ad litem* to make recommendations, that person becomes an arm of the court and is cloaked with judicial immunity.<sup>75</sup>

• **Oregon.** The model PC order states that “[t]he Coordinator acts as a quasi-judicial officer in his/her capacity pursuant to this Order, and, as such, has limited immunity consistent with Oregon law as to all actions undertaken pursuant to the Court appointment and this Order.”

• **Vermont.** In Vermont, PCs are required to have \$250,000 of professional liability insurance coverage.

## **16. Risk Management**

In most jurisdictions, there is no legal code that accurately describes the functioning of the parent coordinator or that addresses issues such as the more flexible gathering of evidence, its due process issues, the informality of the hearing process, and the mixing of functional roles (mediation, arbitration, psychoeducation, assessment, etc.) encompassed within PC work. The parent coordinator is a hybrid role, functioning on the interface of the contrasting cultures of law and psychology. Working with highly conflicted, litigious cases in this adversarial-collaborative interface is one of the most difficult emerging roles for professionals.

The ethical, legal, and malpractice risks are substantial due to several factors, including (1) specialized training, experience, and skill required to function in this legal/mental health role, (2) the risks inherent in functioning in the extremely high conflict child custody context, and (3) the myriad of legal and mental health regulatory organizations that may review the work of the parenting coordinator.

To adequately manage risk, the parent coordinator must understand the requirements and standards that different review processes may impose on their work. When problems arise, multiple processes, including formal legal review (in state or federal courts), professional review (the state bar, the American Psychological Association (or its state/local organization) ethics board, and/or the state consumer protection agency) may become involved in the case. The risks of review by agencies with different, sometimes conflicting, standards of review, or little to no knowledge of the practice can create a minefield for even the most experienced parent coordinators. In an effort to bring more focus to risk management in practicing in this role, Matthew Sullivan<sup>76</sup> has addressed some of the laws, ethical codes, and licensing considerations that are relevant to Parent Coordination.

## **17. Further Research Needed**

The effectiveness of parenting coordinators has not yet been researched. There are clinical and anecdotal data suggesting that conflict is reduced and parents learn to negotiate for themselves

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<sup>75</sup> See *Hartley v. Williamson*, 2001 OK CIV APP 6, 18 P.3d 355; *Perigo v. Wiseman*, 2000 OK 67, 11 P.3d 217; available on-line at the Oklahoma Supreme Courts Network website: <http://www.oscn.net>.

<sup>76</sup>Sullivan, M., Ethical, Legal and Professional Practice Issues Involved in Acting as a Psychologist Special Master in Child Custody Cases, submitted for publication, 2002.



after they use a parenting coordinator. Families, their attorneys, and judges have reported satisfaction with the process.

On the other hand, parenting coordinators have seen many families that have not responded positively to interventions. Future studies that include characteristics of families who did and did not benefit from the assistance of a parenting coordinator hold promise for the development of clear and careful screening questions to help us effectively triage families into the most appropriate intervention.

Research that compares families who have used a parenting coordinator with those who did not, along with the variables of relitigation rates and children's exposure to conflict, would increase our understanding of the effectiveness of parenting coordinators. These studies might also assess satisfaction and perceived problems with the process from the point of view of the families, attorneys, and judges. Additional research-based information on the components of parenting coordination, e.g. education, intervention, and mediation, as well as variables such as length of time, cost, and methods of communication with parents would contribute to our knowledge about the efficacy of parenting coordination.

#### Suggested Research Questions:

- A. What screening process would help differentiate between families who are more and less likely to benefit from the appointment of a parenting coordinator?
- B. Might different PC styles benefit different types of families (i.e. education, intervention, mediation)?
- C. What is the average length of time and cost for PC work?
- D. What different areas of decision-making do PCs actually get involved in?
- E. Can a short-term model where a PC is used for a time-limited period work as well as an ongoing model?
- F. What are perceived benefits in the use of PCs, either from the point of view of judges, attorneys, parents, or the PCs themselves?
- G. What are perceived problems in the use of PCs, either from the point of view of judges, attorneys, parents, or the PCs themselves?
- H. Are people satisfied with the process? If so, is there a difference in satisfaction between judges, attorneys, and families?
- I. Does the use of a PC affect relitigation rates?
- J. Is conflict, especially conflict that children are in the middle of, reduced between those people who used a PC more than in those who did not?

K. From the point of view of the PC, what are the stressors and what are the sources of satisfaction in PC work?

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