

LEERGANG PARENTING COORDINATION

NAJAAR 2019 | VU LAW ACADEMY

College 1

Onderwerp: **Introductie in parenting coordination**
 Rol en functie van de parenting coordinator
 Kernvaardigheden van de parenting coordinator

Datum: 28 november 2019

Zaal: Alma

Docenten: dr. Astrid Martalas & dr. Carla Goosen MDR & mr. dr. Brigitte Chin-A-Fat

Inleiding

Parenting coordination is een ADR proces met elementen van mediation, maar het gaat iets verder; er horen beslissingen bij. De PC kan dus in zekere omstandigheden de knoop doorhakken.

Leerdoelen

Aan het einde van dit onderdeel heeft u:

- een breed overzicht over de verschillende aspecten van parenting coordination.

Onderwerpen

In dit onderdeel komen de volgende onderwerpen aan bod:

- de geschiedenis en oorsprong van parenting coordination;
- parenting coordination clauses;
- de PC overeenkomst;
- de rol en functie van de PC;
- de kernvaardigheden van de PC.

Te bestuderen

Literatuur

- A. Martalas, 'Introductie to parenting coordination, college 1', 2019, p 1 t/m 29. *(zie bijlage achterin map)*
- Parenting co-ordination and dispute resolution. **1**
- Guidelines for Parenting Coordination, Association of Family and Conciliation Courts, 2019. **9**
- Parenting coordination agreement, 2018. **29**
- Parenting co-ordination intake form. **33**
- L. Roux e.a., 'Guidelines on the practice of parenting coordination in South Africa'. **37**
- F.P. Bannink, 'Solution focused mediation', American Society of Trial Consultants, september 2008. **71**
- J. B. Kelly, 'Preparing for the Parenting Coordination Role: Training Needs for Mental Health and Legal Professionals', Routledge, 11 oktober 2008. **81**

Aanbevolen (niet opgenomen in deze bundel)

Literatuur

- A.M. Martalas, 'Alternative Dispute Resolution Post-Divorce or – Family Separation. Parenting Coordination: A Blueprint for its Regulation in South Africa and its introduction in the Netherlands', te raadplegen via: www.pomegranate.org.za/PhD.

PARENTING CO-ORDINATION AND DISPUTE RESOLUTION:

1. Mediation and dispute resolution

1.1 The parties have appointed **name** as PC. Any substitute PC shall be a qualified psychologist, social worker or family lawyer with at least ten years' experience, conversant with working with children and families in the context of disputed residence and contact matters. The PC shall be appointed by agreement between the parties and, failing agreement, by the outgoing PC after consultation with the parties, for a period of 2 (3) years from date of referral of first dispute to the PC.

1.2 The PC shall continue to act as such until he/she resigns, or both parents agree in writing that his/her appointment shall be terminated, or his/her appointment is terminated by an order of the High Court or the expiry of the 2 (3)-year period referred to in clause 1.1 above, whichever event first occurs.

1.3 Neither parent may initiate Court proceedings for the removal of the PC or to bring to the Court's attention any grievances regarding the performance or actions of the PC without first meeting and conferring with the PC in an effort to resolve the grievance.

2. The PC is authorised to:

2.1 assist the parties in implementing and complying with the provisions of the parenting plan;

2.2 mediate joint decisions in respect of child/ren;

2.3 make recommendations or proposals in respect of any issue concerning the welfare and/or affecting the best interests of child/ren, including a variation in contact and care and/or maintenance payable for child/ren which shall **not** be binding upon the parties;

2.4 engage the services of an expert professional to assist him/her to make recommendations that have a bearing on child/ren, provided the parents have agreed on the costs of such expert;

2.5 issue directives which are binding on the parties and child/ren, for as long as a Court of competent jurisdiction has not ordered otherwise, limited to the following specific aspects:

2.5.1 the time, place and manner in which child/ren will be transported and exchanged between the parents during weekend and holiday contact periods;

2.5.2 the variation of weekend or holiday contact arrangements which does not substantially alter the basis of the time-share allocation provided for in this parenting plan;

2.5.3 child-minding arrangements during contact periods;

2.5.4 the manner and method of parental communications;

2.5.5 the time, manner and frequency of telephonic and video contact;

2.5.6 contact with third parties.

2.6 When issuing directives, the PC shall at all times act in child/ren's best interests.

2.7 The PC's directives shall always be subject to the oversight of a Court of competent jurisdiction.

2.8 It is specifically recorded that the PC is **not** authorised to make binding directives regarding:

2.8.1 Child/ren's primary residence and/or care arrangement;

2.8.2 contact periods which substantially alter the basis of the time share allocation in terms of the parenting plan;

2.8.3 guardianship of child/ren;

2.8.4 Child/ren's relocation outside South Africa or the Cape Peninsula;

2.8.5 maintenance payable for child/ren.

3. The procedure to resolve disputes:

3.1 If the parents are unable to reach agreement on any issue where a joint decision in respect of child/ren is required, the dispute shall be referred in writing to the PC who shall forward the correspondence to the other parent and attempt to resolve the dispute as speedily as possible by way of mediation.

- 3.2 The PC shall use his/her best endeavours to resolve disputes by mediation first, even in instances where he/she is authorised to issue binding directives.
- 3.3 The PC shall conduct proceedings which are informal in nature and is entitled to receive information by means of telephone, correspondence, electronic mail, etc.
- 3.4 The PC will use his/her discretion in considering the weight and sufficiency of information provided and may expand his/her enquiry as he/she deems necessary for the purpose of making recommendations, proposals and/or issuing directives.
- 3.5 The PC shall determine the protocol of all communications, interviews and sessions, including who shall or may attend meetings. Legal representatives are not ordinarily entitled to attend such meetings, but a parent shall be permitted to caucus with his or her legal representatives, either in person or by telephone, during such meetings.
- 3.6 The parents and their attorneys shall not have the right to initiate oral communication with the PC in the absence of the other parent.
- 3.7 Any parent may communicate in writing with the PC provided that copies are provided to the other parent, and if applicable, their legal representatives.
- 3.8 The PC may caucus with the parents individually, provided the other parent is notified of this. Information obtained during a caucus meeting shall be made available to the other parent as determined by the PC.
- 3.9 The PC may confer with others, including but not limited to, step-parents, step-siblings, extended family members and friends, permanent life partners, household members, school and educational personnel, care providers and healthcare

providers for the children and therapists for the children and the parents, and the parents authorise such persons to provide information to the PC.

3.10 The parents shall not be entitled to insist that any meeting (including a grievance meeting) or session is tape recorded, videoed or recorded in any manner whatsoever.

3.11 No record need be kept by the PC, except of any recommendations, proposals, directives (and the reasons therefore) or agreements reached by the parties.

3.12 The PC's services involve elements of mediation, expert opinion and counselling, but do not purely fall into any of these categories. The PC is not appointed as a psychotherapist, counsellor or attorney for child/ren or the parents. No psychotherapist/patient or attorney/client relationship is created by this appointment or otherwise exists between the PC and any of the parents.

3.13 Communications between the parents and the PC shall be deemed privileged and not be used in Court proceedings, except for:

3.13.1 any agreements between the parents successfully mediated and summarised by the PC;

3.13.2 the findings and recommendations of experts appointed by the PC;

3.13.3 directives issued or recommendations and proposals made by the PC.

4. Child participation:

4.1 Each parent shall ensure that the PC may meet and/or confer with child/ren at reasonable times and places without either parent being present, if the PC so decides.

4.2 The PC shall take child/ren's views into account having due consideration as to his/her/their age, maturity and stage of development.

4.3 Each parent shall provide the PC with all information reasonably requested by him/her pertaining to child/ren.

5. All participants, including the PC, the parents and their legal representatives, shall use their best efforts to preserve the privacy of the family and, more particularly, child/ren, and restrict dissemination of information related to recommendations or directives to those who need to know the information.

6. In the event that a party fails to participate in any dispute resolution process despite having been requested to do so by the PC, or fails to attend a dispute resolution session, or fails to reply to the PC's communications within five days, which communications may be by telephone, email or fax, or fails to pay the PC's costs upon request, or fails to co-operate in the dispute resolution process in any other way, the PC shall proceed with the dispute resolution process in the absence of that party. In such circumstances, the PC shall be entitled to issue a directive and his/her decision shall be binding on both parties until such decision has been varied by a court of competent jurisdiction.

7. The parents shall be liable for the the PC's costs (save for the cost of telephonic, email or other electronic communications with the PC, which shall be borne by the parent initiating the communication) mother% and father%. The PC may, in his/her sole discretion, vary the liability of the parents for the PC process.



Association of Family and Conciliation Courts

Guidelines for Parenting Coordination

**Guidelines for
Parenting Coordination**

Developed by

The AFCC Task Force on Parenting Coordination

2017-19

Foreword

The Guidelines for Parenting Coordination (“Guidelines”) are the product of the interdisciplinary AFCC Task Force on Parenting Coordination (“Task Force”). These Guidelines build on two previous AFCC task forces, which produced the report, “Parenting Coordination: Implementation Issues”¹ and the first set of AFCC Guidelines for Parenting Coordination.²

It is noteworthy that, as the parenting coordination model has been implemented in various jurisdictions, there has been variation in the authority of a parenting coordinator (“PC”), the stage of the legal process when a PC is appointed, the various functions of a PC, the qualifications and training of a PC, and the best practices for the role.

In 2017, then AFCC President Annette Burns recognized the need to update the 2005 Guidelines to reflect developments that had occurred worldwide since the Guidelines were first promulgated. She appointed the current Task Force on Parenting Coordination (“Task Force”). Task Force members met monthly via videoconference and in person at AFCC Conferences in Boston, Massachusetts (June 2017), Milwaukee, Wisconsin (November 2017), Washington, D.C. (June 2018) and Denver, Colorado (November 2018).

While revising the 2005 Guidelines, the Task Force identified issues in need of exploration: use of technology in parenting coordination; parenting coordination when intimate partner violence (IPV) is an issue; diversity awareness and responsiveness; and, the evolution and impact of legal directives since the emergence of parenting coordination.

To inform the process, two subcommittees were formed. The Legal Subcommittee reviewed current case law, statutes, rules, and regulations across jurisdictions and identified key differences and nuances in the law. This subcommittee also looked at practices in jurisdictions that are currently without formal laws pertaining to parenting coordination, those where law is being developed, and some of the policies and practices in countries where the practice of parenting coordination is emerging. The updated Guidelines are intended to reflect current developments while respecting variances in law and practice across jurisdictions.

The Resource Subcommittee identified resources including publications and other resources that have served to inform and document the practice of parenting coordination as it has advanced over the last approximately 12 years.

Feedback from AFCC membership was solicited throughout the process in several ways: (1) The Task Force surveyed AFCC members to examine parenting coordination practices³; (2) open forums and breakout sessions focusing on the Guidelines were held at AFCC conferences in

¹ See AFCC Task Force on Parenting Coordination, Parenting Coordination: Implementation Issues, (2003) *Family Court Review*, 41(4). 533-541.

² See Guidelines for Parenting Coordination developed by the AFCC Task Force on Parenting Coordination, (2006), *Family Court Review*, 41 (1), 164-181.

³ Much appreciation to Michael Saini, Ph.D., Associate Professor, Factor-Inwentash Faculty of Social Work, for his assistance in developing the surveys and data analysis.

Milwaukee, Wisconsin; Denver, Colorado; Washington DC; and, (3) draft Guidelines, were posted for public comment, resulting in numerous revisions.

The members of the AFCC Task Force on Parenting Coordination (2017 - 2019) were: Debra K. Carter, Ph.D., Chair; Ann M. Ordway, J.D., Ph.D. and Linda Fieldstone, M.Ed., Reporters; Hon. Dolores Bomrad, J.D.; Dominic D’Abate, Ph.D.; Barbara Fidler, Ph.D.; Alexander Jones, J.D., MSW; Mindy Mitnick, Ed.M., M.A.; John A. Moran, Ph.D.; Daniel T. Nau, J.D.; Matthew Sullivan, Ph.D.; Robin Belcher-Timme, Psy.D., ABPP.; and, Leslye Hunter, M.A., AFCC Associate Director.

GUIDELINES FOR PARENTING COORDINATION

Overview

Parenting coordination is a hybrid legal-mental health role that combines assessment, education, case management, conflict management, dispute resolution, and, at times, decision-making functions. Parenting coordination is a child-focused process conducted by a licensed mental health or family law professional, or a certified, qualified or regulated family mediator under the rules or laws of their jurisdiction, with practical professional experience with high conflict family cases. The parenting coordinator (“PC”) assists coparents⁴ engaged in high conflict coparenting to implement their parenting plan by: (1) facilitating the resolution of their disputes in a timely manner; (2) educating coparents about children’s needs; and, (3) with prior approval of coparents or the court, making decisions within the scope of the court order or appointment contract. A PC seeks to protect and sustain safe, healthy, and meaningful parent-child relationships.

Parenting coordination is for coparents who are unable or unwilling to jointly make parenting decisions, communicate effectively, comply with parenting agreements and orders or shield their children from the impact of parental conflict. A PC makes recommendations and, if authorized, legally binding decisions for coparents and may report to the court; therefore, a PC should be appointed by and accountable to the court. Both coparents may agree to participate in the parenting coordination process, and in some jurisdictions this agreement may be implemented without a court order. However, a court order is prudent in these cases. The authority inherent in the role of a PC is substantial whether stipulated by coparents or ordered by the court. Therefore, it is important that any jurisdiction implementing parenting coordination adopt and adhere to a set of guidelines for parenting coordination practice and programs.

The dispute resolution process central to a PC’s role may be inappropriate and potentially misused by perpetrators of intimate partner violence (IPV), who have exhibited or are continuing to exhibit patterns of violence, threat, intimidation, and coercive control over their coparent. Accordingly,

⁴ Coparent refers to an individual who shares legal responsibility for a child with another individual, regardless of biological relationship or the circumstances under which responsibility has been initiated or defined. Coparents may include grandparents, guardians, or others who serve in a quasi-parenting role with a child.

each jurisdiction should have in place a clearly delineated process to develop specialized parenting coordination protocols, screening, procedures, and training in cases involving IPV.

The purpose of these Guidelines is to provide detailed guidance related to:

1. practice for PCs;
2. ethical obligations and conduct of PCs;
3. PC qualifications, including relevant education, training and experience;
4. assistance to courts, professional organizations, educational institutions, and professionals that are developing and implementing parenting coordination programs.

The Guidelines for Parenting Coordination include different levels of guidance.

These Guidelines are aspirational and offer guidance in best practices, qualifications, training and ethical obligations for PCs. AFCC does not intend these Guidelines to define mandatory practice and they are not intended to create legal rules or standards of liability. Each jurisdiction may vary in its practices; however, minimum guidelines and best practices are provided. The word “shall” is typically used in the guidelines not because AFCC enforces or requires adherence, but to be consistent generally with practice requirements of other regulatory bodies and are thought to be best practice.

- Use of the term “may” is the lowest strength of guidance and indicates a practice a PC should consider adopting, but from which the PC may deviate in the exercise of good professional judgment and may be related to jurisdictional variances or other circumstances.
- Use of the term “should” indicates that the practice described is highly desirable and should be departed from only with very strong reason.
- Use of the term “shall” is a higher level of guidance to a PC, indicating that the PC should not have discretion to depart from the practice described.

Guideline I - Competence

A PC shall be qualified by education and training to undertake parenting coordination and shall continue to develop professionally in their associated roles and functions.

- A. **Professional Background and Experience.** A PC shall be a licensed mental health or family law professional, or a certified, qualified or regulated family mediator, under the rules or laws of their jurisdiction. A PC should also have extensive practical professional experience with family cases involving high conflict coparenting dynamics.

- B. **Family Mediation Training.** A PC should have training and experience in family mediation. A PC should become a certified, qualified, or regulated family mediator under the rules or laws of the jurisdiction where he or she practices, if such certification, qualification, or regulation is available.
- C. **Parenting Coordination Training.** A PC shall have training in the parenting coordination process, family dynamics in separation and divorce, dynamics related to parents who were never married to each other, child development, parenting coordination methods and techniques, court specific parenting coordination procedures, family law as it pertains to the parenting coordination process, intimate partner violence, child maltreatment and other safety issues relevant to the parenting coordination process, ethical considerations pertaining to the parenting coordination process, diversity as it affects the parenting coordination process, coparenting relationships, and the use of technology within the parenting coordination process. Recommendations for Comprehensive Training of Parenting Coordinators incorporating specific modules are included as Appendix A.
- D. **Arbitration/Decision-Making Training.** A PC shall have training in decision-making processes where this function of the PC role is permissible by law.
- E. **Continuing Education:** A PC shall maintain professional competence in the parenting coordination process. A PC shall regularly participate in educational activities promoting professional growth⁵.
- F. **Laws and Guidelines.** A PC shall be familiar with the laws governing parenting coordination practice in their jurisdiction, if any, and to comply with those laws. Where specific guidelines conflict, a PC should first comply with the law in the jurisdiction where that PC is practicing, as well as their professional codes of conduct.
- G. **Circumstances Affecting Competence and Role as PC.** A PC shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond a PC's skill or expertise, or personal circumstances (e.g., medical, mental health, substance misuse or dependence, etc.) exist that compromise a PC's ability to perform their role.
- H. **Consultation.** A PC may participate in collegial or peer consultation or mentoring to receive feedback and support on cases, as needed, subject to confidentiality requirements set forth in Guideline V. Consultation is distinguished from supervision in that a PC can choose whether to follow advice from the consultant; a consultant has no authority over the actions or behavior of a PC who consults with them; and, the consultant does not assume responsibility nor incur liability for any actions taken by a PC before, during, or following the consultation.
- I. **Diversity Awareness and Responsiveness.** A PC shall obtain continuing education for diversity awareness to ensure they are providing responsive and competent services, taking

⁵ AFCC Guidelines for the Use of Social Science Research in Family Law (2019), *Family Court Review*, 57(2), 193-200.

into consideration core cultural identities such as race, ethnicity, religion, gender, sexual orientation, and socioeconomic status; as well as potential cultural identities that may not be obvious, but which likely affect an individual's personal presentation (such as an illness or disability) and worldview. A PC shall also be aware of the diverse nuances of specific family structure, such as same gender coparents, blended families, and extended family caregivers.

Guideline II - Impartiality

A PC shall maintain impartiality in the parenting coordination process, although a PC is not neutral when making recommendations and decisions that impact best interests of the children. Impartiality is defined here as freedom from favoritism or bias in word or action.

- A. **Gifts and Favors.** A PC shall neither give nor accept a gift, favor, loan or other item of value from any coparent having an interest in the parenting coordination process or from which a PC may profit.
- B. **Respect for Diversity.** A PC shall not allow their personal values, morals, or beliefs to compromise the parenting coordination process or their efforts to assist coparents and children. If a PC has personal values, morals, or beliefs that will interfere with the parenting coordination process, a PC shall decline the appointment or withdraw from the process.
- C. **Misrepresentation.** A PC shall not intentionally or knowingly misrepresent or omit any material fact, relevant law, or circumstance in the parenting coordination process.
- D. **Integrity.** A PC shall not accept any appointment, provide any service, or perform any act outside the role of a PC that would compromise the integrity of the parenting coordination process.
- E. **Maintaining Impartiality.** A PC shall advise participants of any circumstances that may impact their impartiality, including potential conflicts of interests or bias. A PC shall withdraw if a PC determines they cannot act in an impartial or objective manner.
- F. **Undue Influence.** A PC shall not be compromised by outside pressure, bias, fear of criticism, or self-interest, including monetary gain. A PC shall not coerce or improperly influence a coparent to make a decision.
- G. **Harassment or Exploitation.** A PC shall not engage in any form of harassment or exploitation of coparents, children, students, trainees, supervisees, employees, or colleagues.

Guideline III – Conflict of Interest

A PC shall not serve in a case that would create a conflict of interest. A conflict of interest is a situation in which a person is involved in competing interests or loyalties and serving one interest may involve working against another interest.

- A. **Disclosure.** A PC shall disclose existing or potential conflicts of interest as soon as practical after becoming aware of any factor that gives rise to the potential conflict.
- B. **Waiver.** A PC may serve after the appropriate disclosure of an existing or potential conflict, upon the written agreement of coparents and others specifically related to the existing or potential conflict.
- C. **Additional Services.** A PC shall not create a conflict of interest by providing any other services to coparents, children, or other family members.
- D. **Referrals.** A PC may make referrals to other professionals to provide services to coparents, children, or other family members, but shall avoid actual or apparent conflicts of interest when making referrals. A PC shall not receive any commission, rebate, or remuneration from making a professional referral.
- E. **Solicitation.** A PC shall not solicit or agree to provide future professional services to coparents, children, or other family members beyond the role of parenting coordination.
- F. **Respect of Other Professional Roles.** A PC shall respect the role of other professional disciplines in the parenting coordination process and shall promote cooperation between PCs and other professionals.

Guideline IV – Multiple Roles

A PC shall not serve in multiple concurrent or sequential roles in the same case, even with the consent of coparents.

- A. **Multiple Concurrent or Sequential Roles:** A professional shall not act as a PC with coparents or others directly involved in the parenting coordination process if they previously provided professional services to the same parties. Also, a PC shall not provide professional services other than those pertaining to the parenting coordination process during, or after the term of a PC's involvement with the family. This includes, but is not limited to, service as a confidential mediator, court evaluator, child's attorney, guardian ad litem, child advocate, therapist, consultant, coparenting counselor or coach.
 - 1. A PC shall not have served or serve as a confidential mediator for anyone involved in the same case.

2. A PC shall not have served or serve in a court evaluator role capacity for anyone involved in the same case.
 3. A PC shall not have served or serve as a child's attorney, guardian ad litem, or child advocate for anyone involved in the same case.
 4. A PC shall not have served or serve as a therapist, consultant, or coparenting counselor/coach and shall not 'formally' engage in such roles concurrently or sequentially for any party involved in the same case.
 5. A PC shall not have served or serve as a lawyer for either coparent or anyone involved in the same case.
- B. **Facilitation Role.** A PC should attempt to facilitate resolution of issues by agreement of coparents; however, a PC is not acting in a formal mediation capacity, which would create a dual role.
- C. **Decision-Making Role.** An effort to facilitate resolution of an issue does not disqualify a PC from deciding an unresolved issue, where decision-making is permitted by court order. A PC should provide coparents with written notice of the shift to a decision-making role.

Guideline V – Confidentiality

A PC shall inform all participants in the parenting coordination process of the limitations on confidentiality before the process commences and throughout the process.

- A. **Confidentiality Outside the Parenting Coordination Process.** A PC shall follow the requirements in their jurisdiction regarding maintaining confidentiality outside the parenting coordination process except as provided by law, court order, or by written agreement of coparents.
- B. **Communication with Coparents and Children within the Parenting Coordination Process.** A PC shall notify coparents before the process commences that information shared between them is not confidential and may be shared with other involved participants such as extended family members, professionals, and relevant non-professionals. When a PC includes a child in the process, they should provide information about the limits of confidentiality to them in developmentally appropriate language.
- C. **Communication with Collateral Sources.** Collateral sources may include family members and other relevant professionals and nonprofessionals. With necessary authorization, a PC has discretion to communicate and exchange information with collateral sources. Before requesting information from a collateral source, a PC shall disclose the limits of confidentiality with respect to the request.

- D. **Mandated Reporting Laws.** A PC shall inform coparents of the following limitations of confidentiality:
1. A PC shall follow reporting requirements in their jurisdiction regarding suspected abuse or neglect of a child or vulnerable adult to protective services or law enforcement whether or not a mandatory or voluntary reporter under state, provincial, or federal law; and
 2. A PC shall report to law enforcement or other authorities if a PC has reason to believe that any family member appears to be at serious risk to harm himself or herself, another family member, or a third party.
- E. **Confidentiality of Records.** A PC shall maintain confidentiality of all records developed or obtained during the parenting coordination process in accordance with their licensure requirements, the law, or court order.
1. A PC shall maintain security in the storage and disposal of records.
 2. A PC shall follow jurisdiction and licensure requirements when relocating or closing a parenting coordination practice.
- F. **Use of Confidential Information for Educational Purposes.** A PC shall not disclose the identity of coparents, children, or others involved in the parenting coordination process when information is used for teaching, writing, consulting, supervision, research, or public information.

Guideline VI – Scope of Authority

Whenever possible, a PC should serve by formal order of the court. Any court order or consent agreement of coparents shall clearly and specifically define the PC’s scope of authority and responsibilities. The ability of a court to appoint a PC on its own authority varies; some jurisdictions require coparents to consent before a PC may be appointed.

- A. **Court Order.** A PC should not initiate services until they have received an appointment order, or in jurisdictions where parenting coordination cannot be ordered by the court, a PC should not initiate services in the absence of a consent agreement between the parties, the counsel (if any), and the PC that satisfies any legal requirements. If a court order or consent agreement for parenting coordination services between coparents requires a PC to provide services outside the scope of the parenting coordination process or accepted standards of professional practice, the PC shall address and remedy any such conflict or decline the appointment.
- B. **Recommended Language for Appointment Orders.** The court order or consent agreement between coparents should define essential elements of the parenting coordination process including: term of service, definition and purpose of the PC role, scope of authority of a PC, access to information by a PC, limits of confidentiality, parenting coordination procedures, procedure for decision-making, submission of reports

to the court or to coparents, judicial review process, parenting coordination fees and costs, process for grievances, and process for termination of parenting coordination services.

- C. **Compliance with Laws, Rules, and Orders.** A PC shall comply with all statutes, court orders and rules, administrative orders, and rules relevant to the parenting coordination process.
- D. **Professional Services Contract.** In addition to the court order or a consent agreement between coparents to appoint a PC, a written professional services contract between coparents and the PC shall be used to detail essential elements of the parenting coordination process not contained in the court order or the consent agreement, and other professional issues such as schedule of fees, billing practices, recording keeping, and retainers. A Professional Services Contract is sometimes referred to as a written informed consent agreement.

Guideline VII – Roles and Functions

A PC shall assist coparents in reducing harmful conflict and in promoting the best interests of the children consistent with the roles and functions of a PC.

- A. **Intake Process.** A PC serves a screening and information gathering function. A PC shall screen clients referred for services for suitability of the process. A PC should review a custody evaluation; interim or final court orders; information from other collateral sources; intimate partner violence protective orders; any other applicable cases involving criminal assault, intimate partner violence or child abuse; and other relevant records such as educational records, medical, mental health, therapy, and treatment records; and then analyze the impasses and issues as brought forth by coparents.
- B. **Assessment or Appraisal.** A PC serves an assessment function. A PC shall conduct on-going assessment regarding: appropriateness of coparents for continuation in the parenting coordination process; the need to refer any family member to another professional for services, such as evaluation or treatment; safety of family members and the PC; efficacy of utilized techniques and interventions; and, compliance and violations of the parenting plans or court orders and agreements between coparents and recommendations or decisions by a PC.
- C. **Education.** A PC serves an educational function. A PC should educate coparents about child development, separation/divorce research, the effects of conflict and impact of coparents' behavior on the children, parenting skills, communication, and conflict resolution skills. A PC may model or teach coparents skills and provide direction/redirection to assist coparents in the acquisition of those skills.
- D. **Coordination/Case Management.** A PC serves a coordination or case management function. A PC should work with the professionals and systems involved with the family (e.g. mental health, health care, social services, education, legal). A PC may also work with

extended family, stepparents, and significant others. A PC may also monitor, implement, and enforce court ordered intervention services if authorized to do so.

- E. **Conflict Management.** A PC serves a conflict resolution function, primarily to help coparents resolve or manage child-related conflict. A PC may utilize negotiation, mediation, and arbitration skills. To protect coparents and children in IPV cases, a PC should tailor the process and techniques to prevent opportunities for coercion.
- F. **Communication.** A PC serves as a conduit for communication between coparents. A PC should establish communication protocols and rules of engagement in order to facilitate respectful, child-focused communication between coparents.
- G. **Decision-making.** In some jurisdictions a PC may be empowered to make reports or recommendations to the court, or to make legally binding decisions. These decisions may be subject to judicial review to the extent described in the court order or by consent agreement of coparents.
- H. **Parenting Plan.** A PC may provide clarification of parenting responsibilities and parenting time as authorized by a court order or consent agreement. If authorized by a court order or consent agreement, a PC may assist coparents in developing or revising a parenting plan.
- I. **Written Agreements.** A PC may communicate to the court regarding agreements between coparents, and submit such agreements, if authorized by law or pursuant to the parenting coordination agreement.
- J. **Limitations on Functions.** A PC shall not offer legal advice, therapeutic services, or serve in any additional professional role for any member of the family for which parenting coordination is provided.

Guideline VIII – Informed Consent

A PC shall facilitate the participants’ understanding of the parenting coordination process.

- A. **Power and Rights.** A PC is in a position of considerable authority. A PC shall communicate to coparents the extent of their parental rights given the authority that may be delegated to a PC in the form of recommendations, decision-making, the provisions of confidentiality, the professional persons and other collaterals with whom a PC will be authorized to consult or obtain information. A PC shall communicate to coparents their right to seek redress with the court.
- B. **Understanding the Role of a PC.** At the commencement of the parenting coordination process, and as appropriate thereafter, a PC shall review the court order or consent agreement and the professional services agreement with coparents to clarify with them the nature of the PC’s role, function, authority, provision of confidentiality, and procedures.

- C. **Children Involved in the Parenting Coordination Process.** A PC may meet with children in the parenting coordination process if they are trained in interviewing children and possess the appropriate skills. When meeting with children, a PC shall explain, in developmentally appropriate language, the PC's role, provisions of confidentiality, and anticipated involvement of the children in the process.

Guideline IX – Fees and Costs

A PC shall fully disclose and explain the basis of any fees and costs to coparents.

- A. **Allocation of Fees/Costs.** All fees for parenting coordination services shall be based upon the time expended by a PC and any administrative costs. All fees and costs shall be appropriately allocated between coparents as ordered by the court or as agreed upon in a PC's written fee agreement. A PC may be granted authority to reallocate fees based upon a coparent's responsibility for the actions that led to incurring those fees.
- B. **Prior Notice of Fees/Costs in Writing.** Prior to commencement of the parenting coordination process, a PC shall provide to coparents, in writing, the basis of fees and costs; retainer, if any; procedures for payment; and collection of fees associated with postponement, cancellation, and nonappearance; as well as identifying any other activities that may incur fees and costs.
- C. **Billable Services.** Activities for which a PC may charge include time spent interviewing coparents, children and collateral sources of information; preparation of agreements; correspondence, recommendations, decisions and reports; review of records and correspondence; telephone and electronic conversation; travel; court preparation; and appearances at hearings, depositions and meetings and any associated costs for these.
- D. **Failure to Meet Fee/Costs Agreements.** A PC shall inform coparents that they may suspend or terminate services due to the lack of payment by either coparent.
- E. **Recordkeeping of Fees/Costs.** A PC shall maintain records necessary to document charges for services and expenses and should provide a detailed accounting of those charges to a coparent, their counsel or the court, if requested to do so in accordance with the requirements of the PC's governing body or by law.
- F. **Contingency Fees Prohibited.** A PC shall not charge a contingent fee or base a fee on the outcome of the process.
- G. **Remuneration for Referrals.** A PC shall not accept nor provide a fee for a parenting coordination referral, as further delineated in Guideline III.

Guideline X – Communication and Record-Keeping

A PC shall communicate in a manner that preserves the integrity of the parenting coordination process and considers the safety of coparents and children when communicating with coparents, counsel, children, and the court. A PC should have access to persons involved with family members and documentary information necessary to fulfill their responsibilities.

- A. **Ex Parte Communication.** A PC may engage in individual communications with each of the coparents and their attorneys, unless prohibited in the court order of appointment or consent agreement, or under formal arbitration procedural requirements. A PC should do so in an objective, balanced manner. A PC should communicate agreements, recommendations, and decisions to all coparents.
- B. **Reports to the Court.** A PC should follow the court's rules or instructions regarding reports to the court.
- C. **Collateral Communications.** A PC should have access to all professionals involved with family members including the custody evaluator, attorneys, school officials, medical, and mental health care providers. A PC should have the authority to meet with the children, any stepparent or person acting in that role, or anyone else a PC determines to have a significant role in contributing to or resolving the conflict. A PC should notify any such collateral sources of provisions of confidentiality pertaining to information obtained from them.
- D. **Access to Documents and Information.** A PC should have access to all relevant information including orders, motions, and pleadings filed in the case, the custody evaluation report, Guardian ad Litem reports, and school, medical, and mental health records of coparents and their children. Any court order should authorize a PC to execute releases and obtain consents to permit access to such data and other relevant information.
- E. **Interviews, Meetings, and Participants.** A PC should have initial separate or joint interviews with coparents. If a PC has appropriate training and skills, they may choose to interview the children in a developmentally appropriate manner. A PC may, as needed, interview any individuals who provide services to the children to assess the children's needs and wishes. Communication between a PC and coparents may take place in joint, face-to-face meetings or by electronic means. A PC should determine whether separate or joint sessions are appropriate. In cases involving IPV, a PC shall determine whether to conduct interviews and sessions with coparents separately or in other circumstances to ensure appropriate safety precautions.
- F. **Maintaining Records.** A PC shall maintain records in a manner that is in accordance with the PC's licensing or governing body, or law. The records shall be professional, comprehensive and inclusive of information and documents that relate to and support decisions and recommendations made during the parenting coordination process.

- G. **Documentation of Agreements and Decisions.** A PC shall document in writing all agreements made by coparents and recommendations or decisions made by the PC.
- H. **Responsibility to the Court.** A PC shall be candid, accurate, and responsive in all communications with the court concerning their qualifications, availability, fees, and disciplinary sanctions related to the parenting coordination process as required by law or rule.

Guideline XI – Decision-Making

A PC should attempt to facilitate agreement between coparents in a timely manner on all disputes within a PC’s scope of authority. A PC shall decide the disputed issues or make recommendations as appropriate when coparents do not reach agreement, if it is authorized by the court or consent of coparents.

- A. **Authority for Decision-Making.** A PC may be granted the authority to make decisions (with or without a right of appeal) for coparents when they are unable to agree, or a PC may be permitted only to make recommendations to coparents or to the court. The scope of a PC’s decision-making authority may be limited in some jurisdictions. A PC should first address any dispute about their authority to address an issue prior to beginning work to resolve that issue.
- B. **Scope of Decision-Making.** A PC shall have only the authority to address issues that are identified in the court order or consent agreement. A PC shall have the authority, as specified in the court order or consent agreement, to resolve the following types of issues:
 - 1. Minor changes or clarification of parenting time/access schedules or conditions including vacation, holidays, and temporary variation from the existing parenting plan;
 - 2. Procedures for transitions or exchanges of the children including date, time, place, means of transportation and transporter;
 - 3. Health care management including, but not limited to medical, dental, orthodontic, vision, and other specialties;
 - 4. Child-rearing issues, including but not limited to disciplinary practices, bedtime routines, diet, and homework support.
 - 5. Psychotherapy or other mental health care, for the children and coparents;
 - 6. Psychological testing or other assessment of the children and coparents;
 - 7. Education or daycare, including choice of school, tutoring, summer school, participation in special education testing and programs, or other major educational decisions;

8. Enrichment and extracurricular activities, including camps and employment;
9. Religious observances and education;
10. Children's travel and passport arrangements;
11. Clothing, equipment, and personal possessions of the children;
12. Verbal or written communication, including any forms of electronic communication between coparents about the children.
13. Verbal or written communication, including any forms of electronic communication by between a coparent and children when they are not in that coparent's care;
14. Alteration of appearance of the children including haircuts, tattoos, ear and body piercing, and cosmetic surgery;
15. Roles of and contact with significant others, romantic interests, and extended families;
16. Substance misuse assessment or testing for either or both coparents or for a child, including access to results; and
17. Parenting classes for either or both coparents.

This list is not meant to be inclusive; rather, it provides a framework for understanding the types of issues a PC may routinely address.

- C. **Considerations During Decision-Making.** A PC should consider written or verbal statements about the dispute from each parent, and other relevant sources of information. The methodology used by a PC shall be fair to coparents and transparent to the court and the coparents. A PC shall ensure that each coparent has an opportunity to be heard in the process. A PC shall convey their expectations of coparents' participation in the process and the consequences of nonparticipation. If either coparent refuses to participate, a PC may take appropriate action governed by the court order, relevant statutes, or consent agreement.
- D. **Written Decision of a Parenting Coordinator.** If authorized to make decisions by the law, a PC should communicate their decisions in a timely manner, to be followed by written documentation of the decision. In the event decisions are provided orally, a written version shall follow in a timely manner. A PC should provide rationale for the decision, with the level of detail depending on the nature and magnitude of the issue.

- E. **Major Decisions.** A PC shall not make decisions that would change custody or substantially change the parenting plan.

Guideline XII – Marketing Practices

A PC shall not engage in any marketing practice that diminishes the importance of a coparent’s right to self-determination, compromises the impartiality of the PC, or demeans the integrity of the parenting coordination process or the judicial system.

- A. **False or Misleading Marketing Practice.** A PC shall not engage in marketing practices that contain false or misleading information.
- B. **Accuracy and Honesty.** A PC shall ensure that any advertisements regarding qualifications, services to be rendered, or the parenting coordination process are accurate and honest.
- C. **Promises.** A PC shall not make any claims of achieving specific outcomes.

Guideline XIII – Safety and Capacity

A PC shall be aware of issues regarding safety and capacity that may diminish the integrity of the parenting coordination process. A PC shall promote the safety of all participants throughout the parenting coordination process.

- A. **Screening.** A PC shall screen prospective cases for IPV and decline cases if they do not have specialized training and procedures to effectively manage those cases. A PC should provide ongoing screening and terminate their role as PC if they are unable to manage those cases.
- B. **Protective and No-Contact Orders.** A PC shall honor the terms of all active protective orders and no-contact orders for protection and take measures that may be mandated to ensure the safety of coparents, their children, and the PC.
- C. **Monitoring for Safety.** A PC shall monitor the process for the presence of safety concerns, intimate partner violence, child abuse and neglect, and take appropriate action to address such issues when they are identified.
- D. **Suspending or Terminating Process Based upon Safety Concerns.** A PC shall suspend or may terminate the parenting coordination process when they determine it is unsafe to continue and shall notify the court of the suspension or termination, if required.
- E. **Interruption in Services Due to Parental Impairment or Incapacity.** A PC shall adjourn, terminate, or modify the parenting coordination process if a coparent is incapable of participating in the process.

- F. **Suspicion of Substance Misuse and Mental Impairment.** A PC shall be alert to the reasonable suspicion of any substance misuse by either parent or child, as well as any psychological or psychiatric impairment of any parent or child that compromises their parenting or may be detrimental to the best interests of the children or the safety of family members. A PC may recommend a substance abuse or mental health evaluation and treatment as the PC might deem necessary during the parenting coordination process to address the best interests of the children affected, if legally authorized to do so.

Guideline XIV – Security, Confidentiality and Privacy Related to Use of Technology

A PC shall manage the risks related to the confidentiality and security of information by taking reasonable steps to protect the privacy of all interactions and documentations exchanged consistent with privacy legislation in a PC’s jurisdiction.

- A. A PC should become knowledgeable of and utilize the most current technology available to prevent access to information, documents, or communications within the parenting coordination process to unauthorized third parties.
- B. A PC should utilize protection against viruses and malwares, as recommended by the relevant privacy legislation, when utilizing a computer or electronic device for parenting coordination services, including avoidance of wireless communication that is not secure.
- C. A PC should develop a protocol for the safe storage and disposal of information and data.
- D. A PC should determine the procedures and protocols for providing parenting coordination services remotely or via telecommunications (e.g. telephone, teleconference, electronic group text, email communications, etc.) to ensure the privacy and integrity of the parenting coordination process.
- E. A PC shall follow their professional standards regulating telepsychology and interstate and international practice.

Definitions

These definitions are intended to clarify key concepts and terms that appear throughout these Guidelines. Some terms may vary by jurisdiction.

Arbitration: The hearing and determination of a dispute by a neutral third party with decision-making authority.

Collateral Sources: Professionals and nonprofessionals who assist or are invited to participate in the parenting coordination process.

Consent Agreement (or Stipulated Agreement): A written memorialization, sometimes a court order, specifying the terms under which coparents will conduct themselves. A consent agreement should include the details to which the individuals are agreeing and should be signed and dated by both coparents. In some jurisdictions, consent agreement may be referred to as a stipulated agreement.

Coparent: An individual who shares legal responsibility for a child with another individual, regardless of biological relationship or the circumstances under which responsibility has been initiated or defined. Coparents may include grandparents, guardians, or others who serve in a quasi-parenting role with a child.

Decision: In some jurisdictions, PCs have quasi-judicial authority to make binding decisions⁶ for coparents to follow, which are often subject to appeal. In other jurisdictions, decisions may be the equivalent of recommendations that are subject to further judicial review before they become binding. Written decisions are often accompanied by an explanation or basis for the decision and the process by which the decision was made.

High-Conflict Coparents: Coparents who are unable to resolve the overwhelming majority, or all, of the disputes that arise between them regarding the health, education, general welfare, and process of raising their common children. These individuals tend to rely on the courts or other third-party professionals for recommendations or directives for resolution of such disputes and frequently struggle with communication with one another regarding their common children.

Intimate Partners: Individuals who share or have shared a close interpersonal relationship, often including those who are married or have been married in the past; those who are dating, whether or not the couple has shared sexual intimacy and regardless of sexual orientation; those sharing a familial connection, such as adult family members like parent-child, and cohabitants, current and past. In the context of parenting coordination, intimate partners will usually refer to coparents who share children in common.

Intimate Partner Violence (IPV): Physically aggressive behaviors involving the intentional use of physical force with the potential for causing injury, harm, disability, or death and include: sexually aggressive behaviors; unwanted sexual activity that occurs without consent through the use of force, threats, deception, or exploitation; economically aggressive behaviors involving the use of financial means to intentionally diminish or deprive another of economic security, stability, standing, or self-sufficiency; psychologically aggressive behaviors involving intentional harm to emotional safety, security, or wellbeing; and, coercively controlling behaviors involving harmful conduct that subordinates the will of another through violence, intimidation, intrusiveness, isolation, and/or control.

Joint Custody: An arrangement referring to the sharing of responsibility for children, physically (where the child resides or spends time), legally (decision-making), or both. Joint custody, when not distinguished, does not necessarily delineate the percentage allocation of parenting time (time-

⁶ There are different terms for “decisions,” based on jurisdictional differences, such as awards, determinations, binding recommendations, etc.

sharing) or legal authority. Joint custody may also be called “shared parenting” or “shared care.” A PC should clarify and not assume the underlying meaning of the phrase.

Family Mediation: A process through which a neutral third-party facilitates communication between individuals in a dispute with a goal of helping them resolve that dispute on their own. There are different models of mediation; some are not confidential and may include recommendations to coparents or the court.

Order: A legally binding directive issued by a court or an individual with judicial authority in the jurisdiction where the order was entered, such as a judge or magistrate.

Parent: An individual legally, financially, and physically responsible for children, regardless of biological relationship or circumstances under which responsibility has been initiated.

Parenting Time: The allocation of time each parent has care and responsibility for the children, and any specific guidelines or restrictions that may be in place regarding the schedule.

Recommendation: A proposal for the resolution of a dispute or disagreement, often accompanied by an explanation of the rationale or basis for the recommendation. Recommendations may or may not be binding, depending upon the jurisdiction in which the recommendation is made. Some recommendations become binding after a defined period or under certain circumstances.

Screening: An initial and ongoing process in which a PC will gather information regarding the background of the family members and circumstances and then assess the appropriateness of the family for participation in the parenting coordination process.

LETTERHEAD

Date

This letter serves to confirm that has been appointed as parenting coordinator (hereafter PC) by Order of Court/by agreement, in the matter of:

X (hereinafter referred to as X)

And

Y (hereinafter referred to as y)

Case No.:

1. X and Y confirm that they know and understand the contents of their Court Order and they further understand the role of the PC.
2. The PC's fee for service rendered is (excl. VAT) per hour. Should X and Y require the PC to perform any services after normal working hours (8h00 – 18h00 Monday to Friday), the PC reserves the right to charge an additional after hours rate. The PC's service includes, but is not limited to, time spent with the parties, reading and responding to e-mails, telephone calls, perusal of documents and writing of summaries and directives. E-mails are charged at 3 minutes per e-mail inclusive of the PC's response.
3. The PC reserves the right to increase the facilitator's fee annually.
4. X and Y agree to pay the PC's fees on demand in their respective portions, as per their Order of Court or in the PC's discretion, as the case may be.
5. X and Y acknowledge that should any fees be due and owing and remain outstanding, the PC shall be entitled to suspend any further services until all outstanding amounts have been paid in full.

6. Should the PC be permitted to employ the services of a 3rd party and do so, X and Y shall pay their respective portion of such 3rd party's fee on demand.
7. Should X and Y, notwithstanding the assistance of the PC, fail to reach mutual agreement on any specific matter; they acknowledge that the PC shall be entitled to issue a directive, which shall be binding on the parties. X and Y hereby undertake to abide by any such directive issued by the PC, until such time as the directive is amended by the PC, by written agreement between X and Y or by an Order of Court.
8. The parties specifically record and understand that, while the PC has the authority to issue directives, he/she does not have the responsibility to administer or enforce such directives.
9. X and Y hereby undertake to provide the PC with all reasonable information as may be required to issue a directive on any specific matter and hereby grant permission for the PC to consult with any parties that may be in a position to assist in the issuing of a directive.
10. Whilst the PC shall make reasonable endeavours to arrive at a considered directive, X and Y hereby specifically indemnify the facilitator against any action of whatsoever nature that may arise from the issuing of a directive or otherwise.

SIGNED THIS DAY OF 2018

.....

X

Address:

.....

.....

Cell No.:

ID number:

.....

Y

Address:

.....

.....

Cell no.:

ID number:

.....

(PC)

PARENTING CO-ORDINATION REFERRAL FORM

1. Full names and Identity number

.....

2. Residential address:

.....

3. Work address:

.....

4. Contact details:

Work:..... Home:.....

Cell:..... E-mail:.....

5. Date of separation – if divorced, date of divorce and please provide a copy of the divorce order:

.....

6. Do you have a parenting plan? If so, please provide a copy:

.....

7. Are you receiving any professional help? e.g. – therapy, counseling, coaching, pastoral care? If so, please provide brief details (if you feel comfortable)

.....

8. If either of you were married previously, please give brief details:

.....

9. Details of children born of this marriage/relationship

1st Child:

Full name: Date of birth:

School:Grade:

Currently living with?..... Special circumstances?.....

2nd Child:

Full name: Date of birth:

School:Grade:

Currently living with?..... Special circumstances?.....

3rd Child:

Full name: Date of birth:

School:Grade:

Currently living with?..... Special circumstances?.....

**10. Brief history of the relationship/marriage:
pre-divorce/separation:**

.....
.....
.....

post-divorce/separation:

.....
.....
.....

11. Indicate the reasons that best explain your reasons for separating:

_____ Physical abuse / violence

_____ Threats

_____ Drugs / alcohol abuse

_____ Mental illness

_____ Infidelity

_____ Poor Communication

_____ Emotional abuse

_____ Incompatibility

_____ Great deal of conflict

_____ Taking advantage of the other person

12. Do you have any concerns about being in the same room with your partner? If yes, why?

.....

13. Please provide two positive aspects about your ex-partner:

.....

DATED AT **CAPE TOWN** THIS THE **DAY OF** **2019.**

.....
Name and Surname

.....
Signature

**GUIDELINES ON THE PRACTICE OF
PARENTING COORDINATION IN
SOUTH AFRICA**

**(Compiled by Dr Lynette Roux, Prof Leentjie de Jong, Dr Ronel Duchen, Mr
Laurie Greyvenstein, Mrs Irma Schutte, Adv Liza Segal and Mrs Astrid
Martalas)**

FOREWORD

- A.** These Guidelines for Parenting Coordination in South Africa have been developed from the Guidelines for Parenting Coordination originally created in 2005 by the interdisciplinary Association of Family and Conciliation Courts (“AFCC”) Task Force on Parenting Coordination in the United States of America, the Guidelines for Parenting Coordination subsequently adapted in 2011 by the British Columbia (“BC”) Parenting Coordinators Roster Society in Canada and the Guidelines for the Practice of Parenting Coordination drafted by the American Psychological Association (“APA”) in 2011.
- B.** To alleviate the negative effects of on-going high-conflict, litigious, co-parenting matters on children, our court system, parents and families who form the subject matter of such litigation, the new legal-psychological hybrid form of alternative dispute resolution, namely parenting coordination, has been introduced in practice. In South Africa, this process was not initially termed “parenting coordination”, but became known as “facilitation” in the Western Cape¹ and “case management” in Gauteng.²
- C.** Essentially the same intervention has different names in different parts of the country. Accordingly, it is strongly recommended that the internationally accepted term “parenting coordination” be used in South Africa.
- D.** As parenting coordination is still an evolving field, the consistent use of the term “parenting coordination” is advisable for the sake of continuity and comprehensiveness of professional role development and consistency of practice across South Africa.
- E.** Although South Africa presently has no legislation providing expressly for the appointment of a parenting coordinator (“PC”) to assist parties in the resolution of parenting disputes in high conflict matters, it is submitted that our courts nevertheless have the necessary authority to refer such parties for parenting coordination, even in the absence of an agreement between the parties, where the appointment of a PC will be in the best interests of the

¹ See *Schneider v Aspeling* 2010 3 All SA 332 (WCC); *CM v NG* 2012 4 SA 452 (WCC).

² See *Hummel v Hummel* (SGJ) unreported case no 06274/2012 of 10 September 2012.

children.

- F.** It is argued that where a court has inherent authority as upper guardian of all children, to ensure that the best interests of children are maintained, parenting coordination could be sustained.³ Our High Court, which is the upper guardian of all children,⁴ may therefore make any decision that is in the best interests of children, including appointing a PC so as to minimise the negative impact of conflict and ongoing litigation on the children, either by agreement between the parties to prevent future conflict or in matters for litigious, high-conflict parents.
- G.** Insofar as the Civil Regional Courts and the Children's Courts are concerned, it is argued that:
- a. in terms of section 29(1) of the Children's Act 38 of 2005, ("*the Children's Act*") jurisdiction is conferred upon these courts in respect of matters pertaining to parental responsibilities and rights agreements, court-assigned contact, care and guardianship as well as the suspension, termination, extension or circumscription of parental responsibilities and rights;
 - b. section 45(1) of the Children's Act has further substantially broadened the jurisdiction of the Children's Court;
 - c. section 45(3) has placed the Civil Regional Court on par with the High Court in respect of children's issues;
 - d. both the Children's Court and the Civil Regional Courts in terms of section 9 of the Children's Act and in terms of section 28(2) of the Constitution of the Republic of South Africa, 1996 ("*the Constitution*"), are to apply the standard that the child's best interest is of paramount importance.
 - e. there are several provisions in the Children's Act that could possibly be relied upon in support of the appointment of a PC in circumstances where the child's best interests require such an appointment. These include, *inter alia*,:
 - i. section 2(d) of the Children's Act, which has as one of its objects,

³ See the argument on behalf on the applicant in *Hummelv Hummel* (SGJ) unreported case no 06274/2012 of 10 September 2012 para 14. See also *Schneider v Aspelung* 2010 3 All SA 332 (WCC) and *CM v NG* 2012 4 SA 452 (WCC) where the court in both cases ordered the appointment of a facilitator without any reference to an agreement between the parties on such appointment.

⁴ See *Calitz v Calitz* 1939 AD 56; Heaton *South African Family Law*(2010) 302; s 45(4) of the *Children's Act* 38 of 2005.

the making of provision for “structures, services and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children”;

- ii. section 6(2)(a) of the Children’s Act, all proceedings, actions or decisions in a matter concerning a child must respect, protect, promote and fulfil the child's rights set out in the Bill of Rights (Section 28(1)(a)-(i)) and the best interests of the child standard (Section 28(2) the Constitution);
- iii. section 6(4)(a) of the Children’s Act, in any matter concerning a child, an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided;
- iv. section 7(1)(n) of the Children’s Act, one of the factors that must be taken into consideration whenever a provision of the Act requires that the best interests of the child standard be applied, is a consideration of which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.⁵
- v. Furthermore, Retired Judge Goldstein is of the opinion that sections 23 and 28, of the Children’s Act, which deal with court-assigned contact and care to interested persons and the extension and suspension of parental responsibilities and rights respectively, are wide enough to encompass the court’s power to appoint a third person in *loco parentis* with decision-making powers.⁶ Judge Goldstein’s argument is therefore that parenting coordination is not so much a delegation of judicial authority but rather an extension of the parents’ parental responsibilities and rights. It is suggested that a PC will be regarded by the court as a person having sufficient interest in the care, well-being or development of a child to approach the court in terms of these two sections of the Act.

H. Further support for the appointment of a PC could arguably be found in section 38 of the Constitution, which addresses the need for a court to craft a remedy for every right that the Constitution confers upon an individual.⁷

⁵ The last-mentioned section was also relied upon by the applicant in *Hummel v Hummel* (SGJ) unreported case no 06274/2012 of 10 September 2012 para 12 in support of the appointment of a PC.

⁶ Goldstein E "Facilitation – Did *Hummel v Hummel* Do Children any Favours?" in Clarks Attorneys *1st Annual Johannesburg Conference – Excellence in Family Law: Delivering Clients the Service They Deserve* (unpublished conference proceedings 2014) 67-68.

⁷ See para 14 of *Hummel v Hummel* (SGJ) unreported case no 06274/2012 of 10 September 2012.

- I.** It is therefore submitted that there is ample authority to support the appointment of a PC by our courts, even in the absence of an agreement between the parties to appoint a PC.
- J.** The mandate⁸ of the Task Force on the Practice of Parenting Coordination in South Africa is to:
- a. Make proposals that assist in unifying and regulating the practice of parenting coordination (facilitation and case management) in the public interest across the country;
 - b. propose standards for competent and ethical practice of parenting coordination;
 - c. promote excellence among PCs;
 - d. ensure that the best interests of the child standard is consistently applied;
 - e. ensure that children participate in the parenting coordination process and, where appropriate, express their views as provided for in sections 10 and 31 of the Children's Act as well as regulation 11(1) to the Act;
 - f. ensure that in terms of section 6(5) of the Children's Act as well as regulation 11(2) to the Act children are informed of any action or decision taken in a matter concerning them which significantly affects such children.

K. DEFINITIONS

Where terminology, currently defined in Chapter 1 of the Children's Act, section 1 of the Domestic Violence Act 116 of 1998 or in any other applicable legislation is used in these Guidelines, the definitions in the respective Acts shall apply.

- a. Accreditation: the recognition of maintaining standards requisite for the membership of a mediation organisation (such as the South African Association of Mediators ("SAAM"), the Family Mediation Association of the Cape ("FAMAC") and the Kwazulu-Natal Association of Family Mediators ("KAFAM")) involving qualifications, training, supervision and experience as set by the National Accreditation Board for Family Mediators ("NABFAM").

⁸ Mandated by SAAM (South African Association of Mediators)

- b. Adversarial process: a legal system involving two opposing parties, each attempting to persuade a judge to rule in favour of his or her position.
- c. Agreement between parties to appoint a PC: In the absence of a court order, the parties pertaining to the children may enter into an agreement between themselves to appoint a PC.
- d. Alternative dispute resolution (ADR): a collective term for the process of resolving disputes outside of the adversarial system with or without the assistance of a third person.
- e. Directive: a decision reached by a PC, after a process of attempting to achieve an agreement between parties regarding a specific dispute(s), has failed. A directive is binding unless and until it has been set aside or varied by a court of competent jurisdiction.
- f. High-conflict relationship: a relationship where the parties demonstrate a pattern of ongoing disagreement, litigation, anger and distrust, (which may be accompanied by verbal abuse, physical aggression or threats of physical aggression) and experience difficulties in communicating and cooperating with one another in the care of their children.
- g. Party/parties: co-holder/(s) of parental responsibilities and rights, more often than not the biological parents of the children.
- h. PC agreement: the agreement between the parties and the PC stipulating various aspects of the role and function of the PC as well as certain administrative aspects of the parenting coordination process.
- i. Recommendation: A recommendation made by a PC to the parents and/or court on all issues where the parents agreed that the PC should only be entitled to make recommendations and not to issue directives; or a recommendation made by a PC to parents and/or the court on issues regarding which the PC is specifically prohibited from issuing directives (see guideline 9.5.3), or in circumstances where the PC elects to make a recommendation notwithstanding the fact that he/she is permitted to issue a directive. A recommendation is not binding unless

it is agreed upon between the parties or made an order of a court of competent jurisdiction.

L. OVERVIEW AND TERMS USED IN THE PARENTING COORDINATION PROCESS

- a. Parenting coordination is a quasi-legal, quasi-mental health, dispute resolution process which combines assessment, conflict management, education, facilitation, case management, mediation and limited decision-making functions.
- b. The parenting coordination process and the duties of the PC must primarily be focussed on the best interests of the child standard as set out in section 28(2) of the Constitution and section 9 of the Children's Act.
- c. The process is reactive in the sense that it is initiated by the raising of a dispute by one or both parties unless the best interests of the child requires a pro-active approach on the part of the PC.
- d. Parenting coordination is not arbitration.
- e. The objective of the parenting coordination process is to assist disputing parties in protecting and sustaining safe, healthy and meaningful parent-child relationships by *inter alia*:
 - i. educating parents about children's needs and the effect of parental conflict on them;
 - ii. educating the parents to work together and to cooperate with one another to reach decisions between themselves regarding their children;
 - iii. implementing parenting plans or court orders; and
 - iv. resolving conflicts regarding the children and/or arising from the parenting plan or court order in a timely manner.
- f. A PC is generally appointed by the court for those high conflict parents who have demonstrated an inability or unwillingness to make parenting decisions on their own, comply with parenting agreements and orders, reduce child-related conflicts, and protect their children from the impact of that conflict.

- g. When the PC is appointed by a court order, the PC can proceed with the parenting coordination in the best interests of the child, which may include the issuing of directives, even in circumstances where one of the parties refuses to consult with the PC.
- h. A PC may also be appointed by agreement between the parties to issue directives which are binding on the parties only in the event that the parties cannot reach agreement.
- i. The delegation of decision-making authority is a serious issue and only qualified professionals should be appointed to this role.
- j. A PC may be requested by the court to provide a written or oral report to the court.
- k. The parenting coordination process is child-focused and practiced by experienced mental health and/or legal professionals, with specialised training and experience in conflict management, working with high conflict personalities, facilitating child participation, mediation and the issuing of directives.
- l. A PC must routinely screen prospective matters for domestic violence and decline to accept such matters if they do not have specialised training and expertise to effectively manage matters involving violence, power imbalance, and patterns of control and coercion.
- m. The Guidelines provide detailed guidance for PCs concerning:
 - i. minimum qualifications;
 - ii. ethical obligations and conduct; and
 - iii. practice and procedure.
- n. The Guidelines refer to different levels of guidance as follows:
 - i. the term "may" in the Guideline is the lowest strength of guidance and indicates a practice that the PC should consider adopting, but from which the PC can deviate in the exercise of good professional judgment;
 - ii. the term "should" indicates that the practice described in the Guideline is highly recommended and should only be departed from in exceptional or compelling circumstances; and

- iii. the term "must" in the Guideline denotes the highest level of direction, indicating that the described practice is mandatory.
- o. There are thirteen best practice Guidelines, including statements of underlying principles, to assist PCs in identifying how best to conduct themselves and their practices in the discharge of their appointed duties in compliance with the governing legislation, orders of the court, an agreement between the parties to appoint a PC, and/or a PC agreement.

1. GUIDELINE I – QUALIFICATIONS

- 1.1 A PC must be qualified by education, training and experience to undertake parenting coordination with the skill and capacity required to deal appropriately and efficiently with high conflict parenting issues in the best interests of the children.
- 1.2 Any person seeking to serve as a PC must at a minimum:-
 - 1.2.1 have a mental health or legal professional qualification (NQF level 7 or higher); and
 - 1.2.2 be a NABFAM accredited family mediator;
 - 1.2.3 have specific training in the parenting coordination process, which includes knowledge of family dynamics in separation and divorce, facilitating child participation and domestic violence screening; and
 - 1.2.4 have seven years professional experience in family dispute resolution; and
 - 1.2.5 be a member of a designated professional organisation, such as the Health Professions Council of South Africa ("HPCSA"), the South African Council for Social Service Professions ("SACSSP"), the Law Society of South Africa ("LSSA") or the General Bar Council of South Africa; or
 - 1.2.6 have served for a period of seven years on the bench as a judge or magistrate; and
 - 1.2.7 have a certificate of good standing with NABFAM and the designated professional body; or,
 - 1.2.8 be a person deemed to be suitably qualified by the Court.
- 1.3 A PC should participate in peer consultation and/or mentoring to receive feedback and support in respect of ongoing matters. PC agreements should specify that such professional consultation is permitted (see Guideline V).
- 1.4 A PC must maintain professional competence in parenting coordination

and should regularly participate in continuing educational activities promoting professional growth as a PC. The PC should keep a portfolio of evidence of such activities (e.g. peer consultations, reading, discussion sessions, training sessions, seminars, conferences and workshops.)

- 1.5 A PC must decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the PC's skill or expertise.
- 1.6 A PC seeking to be accepted by the Parenting Coordination Division of a NABFAM member organisation such as SAAM, FAMAC or KAFAM must:
 - 1.6.1 be of character satisfactory to such member organisation; and
 - 1.6.2 meet the requirements set out by such member organisation, from time to time.

2. GUIDELINE II – SCOPE OF PARENTING COORDINATOR’S AUTHORITY AND RESPONSIBILITY

- 2.1 A PC may only serve by:
 - 2.1.1 agreement between the parties in writing; and/or
 - 2.1.2 an order of court; which
 - 2.1.3 provides the PC with the requisite authority to work with the parties outside of the adversarial process, obtain information, make recommendations and issue directives as to the matters specified in the agreement or court order.
- 2.2 A court order or written agreement between the parties must clearly and specifically define the PC's scope of authority and responsibilities.
- 2.3 The court order and/or the agreement between the parties to appoint a PC should specify a term of appointment for the PC, including starting and ending dates, renewal terms, and termination conditions.
- 2.4 In addition to any agreement between the parties or court order providing for the appointment of a PC, a written PC agreement between the parties and the PC must be entered into which agreement shall detail specific issues not contained in the agreement between the parties and/or the court order, such as procedures to be followed, fees, services and billing practices.
- 2.5 With regard to the selection of a PC, the parties should have the option

of appointing a PC by agreement; however, if they cannot reach an agreement on the choice of a PC, the court may select a PC for the parties or may nominate the Chairperson of an appropriate organisation to select a PC.

2.6 Issuing of Directives:

2.6.1 A PC must

2.6.1.1 be empowered to and issue directives to the extent permitted by the appointing court order or agreement between the parties to appoint a PC;

2.6.1.2 be knowledgeable about the applicable law;

2.6.1.3 be knowledgeable about the procedure for the issuing of directives; and

2.6.1.4 deliver such directives to the parties in a timely manner by email, Facetime, fax, Skype, telephone, or in person. In the event that a directive is provided orally, a written version, including reasons, must follow in a timely manner.

2.6.2 A PC must not

2.6.2.1 issue directives outside the scope of the PC's authority;

2.6.2.2 issue directives that would change legal guardianship or primary residence or completely suspend contact with a parent; and

2.6.2.3 offer legal or psychological advice.

2.7 In circumstances where a PC is not permitted to issue a directive as provided for in paragraph 2.6, the PC may make a recommendation to the parents and/or the court in respect of such issue. This should be in keeping with the Role and Function of the PC as outlined in Guideline IX.

3. **GUIDELINE III – CO-PARENTING COORDINATION**

3.1 A PC team consisting of more than one PC (usually from different disciplines) may be appointed, referred to as co-parenting coordinators ("Co-PCs").

3.2 The Co-PCs must develop a workable system for the following:

3.2.1 The management of the division of responsibilities.

3.2.2 Decision making procedures which must be set out clearly with regard to which decisions may be made separately and

- which decisions must be made jointly.
- 3.2.3 Responding to correspondence from the parties.
- 3.2.4 Costs for services provided individually by each PC.
- 3.2.5 Costs for services provided jointly by the PCs.
- 3.2.6 Costs for joint meetings between the PCs.

4. GUIDELINE IV - INFORMED CONSENT

- 4.1 A PC must at the outset of the process:-
 - 4.1.1 review with the parties the nature of the PC's role and parameters of appointment specifically in relation to the issuing of directives;
 - 4.1.2 be satisfied that the parties understand the nature of the process, including, *inter alia*:-
 - i the extent of the authority assigned to the PC;
 - ii that the PC's authority to act ends after two years as well as the procedures for reappointment and termination of the PC (see Guideline XII);
 - iii the limited nature of the confidentiality of the process (see Guideline VI);
 - iv that the PC is obliged from time to time to obtain the participation of the child/ren;
 - v that the PC will be authorised to consult with and obtain information from third parties;
 - vi that the PC may appoint other professionals;
 - vii that permission is required to be given for the PC to discuss the matter for consultation purposes with another professional;
 - viii the extent of the parties' financial responsibilities in respect of the PC process;
 - ix the parties' rights to approach the court; and
 - x the fact that both parties and the PC are required to sign a PC agreement at the outset of the process in order to initiate the process.

5. GUIDELINE V - IMPARTIALITY

- 5.1 A PC must maintain impartiality in the process of parenting coordination. In this Guideline, "impartiality" denotes:-
 - 5.1.1 freedom from favouritism or bias in word, action, or appearance, and includes a commitment to assisting all parties, as opposed to any one individual; and

- 5.1.2 does not mean that a PC must be neutral regarding particular conduct or a particular directive.
- 5.2 A PC must withdraw if the PC determines that he or she cannot act in an impartial or objective manner.
- 5.3 A PC must neither give nor accept a gift, favour, loan or other item of value to or from any party having an interest in the parenting coordination process. During the term of the PC's appointment, a PC must not solicit or otherwise attempt to procure future benefits, services or positions from which the PC may profit.
- 5.4 A PC must not coerce or improperly influence any party to make a decision.
- 5.5 A PC must not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance material to the parenting coordination process.
- 5.6 A PC must not accept any engagement, provide any service, or perform any act outside the role of PC that would compromise the PC's integrity or impartiality in the parenting coordination process.

6. GUIDELINE VI – CONFIDENTIALITY, TRANSPARENCY AND DUE PROCESS

- 6.1 Parenting coordination is not a confidential process for communications between:
 - 6.1.1 the parties, their children and the PC;
 - 6.1.2 the PC and other relevant parties to the parenting coordination process; or
 - 6.1.3 the PC and the court.
- 6.2 Subject to:
 - 6.2.1 the legal limitations on confidentiality;
 - 6.2.2 permitted professional purposes (as referred to in Guideline 4.1.2 (vii) above); and
 - 6.2.3 the express provisions of the authorising court order or agreement,a PC must maintain confidentiality and information obtained must not be shared outside of the parenting coordination process.
- 6.3 A PC must inform the parties of the limitations on confidentiality as provided for in this Guideline and, in particular, that:

- 6.3.1 suspected child abuse or neglect must be reported to the relevant authorities in accordance with section 110 of the Children's Act;
 - 6.3.2 the PC must report to law enforcement or other authorities if the PC has reason to believe that any family member appears to pose a serious risk of harm to self or others.
- 6.4 The PC must use a methodology that is fair and transparent to both parties and the court. Each party must be given an opportunity to be heard in the process. Notice must be given as to what is expected from the participation of the parties and the consequences of non-participation. If one party refuses to cooperate after notice, the PC may continue to resolve the dispute or withdraw from the process in accordance with the governing court order and/or the agreement between the parties to appoint a PC and the PC agreement.
- 6.5 In the event that a PC communicates with a third party in the course of the parenting coordination process, the PC should notify any such third party that information obtained from them is not confidential and that it may be made available to the parties if in the best interests of the children, and/or be used in the issuing of directives, the writing of reports, the making of recommendations or when testifying in court.

7. GUIDELINE VII – CONFLICTS OF INTEREST

- 7.1 A PC must not serve or continue to serve in a matter in which there is a conflict of interest, including situations in which the impartiality of the PC is compromised or appears to be compromised, where the PC has been involved in the matter previously in a different capacity, or where the PC has personal knowledge of the parties or the matter.
- 7.2 During the term of a parenting coordination appointment, a PC must not create a conflict of interest by providing any services to interested parties that are not directly related to the parenting coordination process.
- 7.3 A PC must disclose potential conflicts of interest as soon as the PC becomes aware of any interest or relationship giving rise to the potential conflict.
- 7.4 After appropriate disclosure of potential conflicts of interests, the PC may serve, or continue to serve, with the written agreement of all parties. However, if the conflict of interest clearly impairs a PC's impartiality, the PC must withdraw regardless of the express agreement

of the parties.

- 7.5 A PC may make referrals to other professionals to work with the family, but must avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, benefits or similar remuneration must be received or given by a PC for referrals.

8. GUIDELINE VIII – SEQUENTIAL OR MULTIPLE ROLES

- 8.1 A PC must not serve in sequential or multiple roles in a case that creates a professional conflict, including:
- 8.1.1 a party's legal representative or a child's legal representative must not be appointed as a PC in the same case;
 - 8.1.2 a PC must not be appointed as the lawyer for one party or a child either during or after the term of the PC's appointment with the family; and
 - 8.1.3 a PC must not become a therapist, evaluator, consultant, coach, or other mental health care provider to a party or a child, either during or after the term of the PC's appointment with the family.
- 8.2 Notwithstanding the provisions in 8.1 above, it must be understood that the role of a PC includes *inter alia*:
- 8.2.1 facilitation of issues by agreement between the parties *inter alia* through mediation, education and negotiation (although the PC does not act in a traditional mediation role);
 - 8.2.2 dispute resolution which, depending on the terms of the PC agreement may necessitate the PC issuing a directive.

9. GUIDELINE IX – ROLE & FUNCTIONS OF THE PARENTING COORDINATOR

- 9.1 A PC must assist the parties in promoting the best interests of the children and reducing conflict between the parties consistent with the role and functions of a PC as set out in these Guidelines.
- 9.2 Assessment Function: a PC
- 9.2.1 must be alert to any reasonable suspicion of domestic violence directed at anyone, particularly the children. The PC must act in accordance with any protection order in place and use his or her best endeavours to ensure the safety of all participants in the parenting coordination process. The PC must be alert to any reasonable suspicion of:

- i substance abuse by a parent or child;
 - ii any cognitive, psychological or psychiatric impairment of a parent or child;
 - iii neurological difficulties of a parent or child;
 - iv high conflict personality dynamics; and
 - v child abuse and/or neglect, physically or otherwise;
- 9.2.2 should have initial individual and/or joint interviews with the parties;
- 9.2.3 may interview individuals who provide services to the children, to assist with the assessment of the children's needs and wishes;
- 9.2.4 may communicate by way of joint or individual meetings, telephone conferences, e-mail, text messages, Skype or any appropriate virtual platform;
- 9.2.5 should determine whether separate or joint sessions are most appropriate at any particular time;
- 9.2.6 may make referrals to allied professionals or services;
- 9.2.7 must have the authority to meet and/or consult with all relevant persons including, but not limited to,
 - i the legal representatives for all parties;
 - ii a legal representative appointed for any of the children;
 - ii any person acting in a parental role for the children;
 - iii the children;⁹
 - iv any professional who has compiled a professional report;
 - v school officials;
 - vi physical, medical and mental health care providers;
 - vii extended and/or blended family members; and
 - viii anyone else whom the PC determines to have a significant role in contributing to or resolving the conflict;
- 9.2.8 must have access to and review all documentary information necessary to assess the inter-personal dynamics and issues raised by the parties and their children, including:
 - i all parenting capacity reports;
 - ii relevant court documents and orders;
 - iii affidavits;
 - iv records from related proceedings, including but not limited to assault, domestic violence or child protection cases;
 - v relevant health, mental health, psychological testing, counselling and educational records; and
 - vi any other relevant records.

⁹ In accordance with sections 10 & 31 of the Children's Act and regulation 11(1) to the Act.

9.3 Conflict Management Function: a PC

- 9.3.1 should encourage and assist parties to resolve disagreements and minimise conflict;
- 9.3.2 should address exchanges among family members to assist in improving communication and reducing conflict, and suggest more productive forms of communication that may limit conflict;
- 9.3.3 should in cases of domestic violence or patterns of coercive control, employ techniques to minimise or eliminate the risk of opportunity for further violence and coercion;
- 9.3.4 should, in cases of domestic violence or patterns of control and coercion, hold individual sessions with the parties to convey the information required by Guidelines.

9.4 Dispute Resolution Function: in keeping with the authority and responsibilities as outlined in Guideline II a PC

- 9.4.1 should facilitate agreement between the parties on all disputes regarding their children, having regard to the nature and urgency (if any) of the dispute;
- 9.4.2 should employ dispute resolution skills, including negotiation, mediation and, when necessary, the issuing of directives to assist in resolving disputes;
- 9.4.3 must facilitate child participation in all disputes concerning the child in accordance with the provisions of the Children's Act;
- 9.4.4 must only address disputes that are within the authority of the PC by the authorising court order and/or agreement between the parties to appoint a PC. A PC may have authority to resolve, *inter alia*, the following types of disputes:
 - i changes or clarification of parenting time/contact schedules or conditions including vacations, allocation of holidays and temporary variations of the existing parenting plan in accordance with the developmental and circumstantial needs of the children and/or a material change in either parent's circumstances;
 - ii transitions/exchanges of the children including date, time, place, means of transportation and transporter;
 - iii health care management including, *inter alia*, medical, dental, orthodontic, and vision care;
 - iv child-rearing issues;
 - v psychotherapy or other mental health care including counselling for the children;
 - vi psychological testing or other assessment of the children and parents;

- vii education or day-care, including school choice, tutoring, participation in education— related assessments and programs, or other major educational decisions;
- viii enrichment and extracurricular activities including camps and jobs;
- ix religious observances and education;
- x children’s travel and passport arrangements where permission to travel abroad has been agreed upon between the parties or granted by an order of court;
- xi clothing, equipment, personal possessions of the children;
- xii communication between the parents and the children including telephone, fax, e-mail, notes in backpacks, etc.;
- xiii communication by a parent with the children including telephone, cell phone or any virtual communication platform and e-mail when they are not in that parent’s care;
- xiv alteration of appearance of the children including hair-cuts, tattoos, ear and body piercing;
- xv role of, and contact with significant others and extended family members;
- xvi substance abuse assessment or testing for either or both parents or a child, including access to results; and
- xvii parenting education for either or both parents.

9.6 Educational Function: a PC may inform or educate the parties about

- 9.6.1 child development;
- 9.6.2 parenting skills;
- 9.6.3 the impact of conflict on children;
- 9.6.4 communication skills;
- 9.6.5 strategies for communication and conflict management with the child;
- 9.6.6 dispute resolution skills; and
- 9.6.7 when appropriate, any relevant research.

10 GUIDELINE X – COMMUNICATIONS AND RECORD-KEEPING

- 10.1 Since parenting coordination is a non-adversarial process designed to reduce conflict and help settle disputes efficiently in the best interest of children, a PC must communicate with all parties, children, legal representatives, colleagues and the court in a manner which preserves the integrity of the parenting coordination process and considers the

safety of all participants.

10.2 In communicating with the participants in the parenting coordination process, a PC:

- 10.2.1 must communicate in an objective, balanced manner that takes into consideration any possibility of a perception of bias;
- 10.2.2 must determine and communicate a standardised protocol for the resolution of specific disputes as and when such disputes arise;
- 10.2.3 may initiate or receive oral or written communications with the parties, their children, legal representatives of the parties or the children, and all other parties relevant to understanding the issues;
- 10.2.4 may engage in individual communications with the parties, their children and/or their legal representatives;
- 10.2.5 as far as possible should communicate agreements, recommendations and directives to all parties at the same time;
- 10.2.6 must not communicate with the court without the knowledge of all parties to the PC agreement.

10.3 A PC must maintain reasonable practice records in a manner that is professional, comprehensive and inclusive of information and documents that relate to the parenting coordination process and that support the recommendations and directives made by the PC.

10.4 Specifically, in this regard a PC must:

- 10.4.1 keep sufficient notes regarding communications with all participants in the parenting coordination process;
- 10.4.2 document in writing all agreements made by the parties and/or directives issued by the PC;
- 10.4.3 follow the court's directions regarding provision to the court of a copy of any directives made by the PC;
- 10.4.4 follow the court's directions regarding provision to the court of any report or recommendations made by the PC.

10.5 Where the services of a PC are terminated and a new PC is appointed, the new PC must request the relevant records and documents as set out in 10.4 above from the previous PC.

11 GUIDELINE XI – PRACTICE

11.1 A PC must not engage in marketing activities that contain false or misleading information. A PC must ensure that all marketing material

used in relation to his or her practice and experience regarding

11.1.1 his or her qualifications and experience;

11.1.2 the services to be rendered; and

11.1.3 the parenting coordination process;

are accurate, verifiable and not misleading. A PC must not make claims of achieving specific outcomes, implying favouritism or creating an unjustified expectation about the parenting coordination process.

11.2 Parenting coordination services should be accessible to all parents, irrespective of their financial resources. In an endeavour to provide parenting coordination services to all, PCs are encouraged to provide services *pro bono* or at reduced rates, to deserving parents at the PC's sole discretion.

11.3 A PC who is a member of a NABFAM member organisation or any equivalent national accreditation agency must:

11.3.1 respond promptly and completely to any communication from such organisation;

11.3.2 cooperate with such organisation in addressing concerns or complaints from the public; and

11.3.3 otherwise comply with the organisations' policies, practice and procedural requirements.

12 GUIDELINE XII – BILLING

12.1 Prior to the commencement of a parenting coordination appointment, a PC must explain to the parties the basis upon which all fees are charged, including fees for disbursements, taxes, costs, retainers and deposits, payment methods and any penalties for postponement, cancellation and/or nonappearance, as well as any other financial terms applicable, all of which must be confirmed in writing. The fees charged for parenting coordination services must be based on the actual time expended by the PC.

12.2 The PC should comply with any practice rules regarding fees. Activities for which a PC may charge include, but are not limited to:

12.2.1 time spent consulting with parents, children and collateral sources of information;

12.2.2 preparation of agreements; correspondence, decisions and reports;

12.2.3 review of records and correspondence;

12.2.4 telephone and electronic communication;

12.2.5 meetings; and

12.2.6 travel costs, travelling time and, if applicable, accommodation.

- 12.3 A PC must maintain records necessary to support charges for services and expenses and should make detailed and specified accounting of those charges to the parties.
- 12.4 A PC may request a retainer and/or deposit prior to starting a case. The parties should be billed on a regular basis and notified when the retainer and/or deposit is to be replenished.
- 12.5 All fees and costs must be appropriately divided between the parties as directed by the court order of appointment or as agreed in the agreement to appoint a PC and/or the PC agreement.
- 12.6 A PC must not refrain from taking action or issuing a directive in terms of the court order of appointment or as agreed in the agreement to appoint a PC and/or the PC agreement, which is in *the best interest of the children*, due to the fact that there are outstanding fees.
- 12.7 In the event that either one, or both, parties has not maintained the required retainer, or has an outstanding balance on their account with the PC, the PC may:
- 12.7.1 give the defaulter the opportunity to remedy the situation within 10 (ten) days.
 - 12.7.2 Should the defaulter fail to remedy the situation within 10 (ten) days the PC may exercise the option to suspend services temporarily and inform the parties thereof.
 - 12.7.3 If necessary the PC may inform the parties' legal representatives and any other relevant stakeholders.

13 GUIDELINE XIII – DURATION AND TERMINATION OF THE PARENTING COORDINATION PROCESS

- 13.1 A PC's authority to act ends in accordance with the provisions of the court order, alternatively in accordance with the terms of the PC agreement. It is recommended that a PC is appointed for a period of two years.
- 13.2 Notwithstanding the provision in 13.1, a PC's appointment may be extended by a further parenting coordination agreement or order, for a period not exceeding 2 years.
- 13.3 Notwithstanding the provision in 13.1, a PC's appointment may be terminated at any time as follows:
- 13.3.1 by agreement between the parties;

- 13.3.2 by an order made on application by either of the parties;
- 13.3.3 unilaterally by the PC in writing, on notice to the parties or with immediate effect at the sole discretion of the PC.

13.4 Upon termination the PC must refer the parties to other suitably qualified professionals who can assume the role and responsibilities of a PC for the parties, alternatively to the relevant NABFAM member organisation, such as FAMAC, KAFAM or SAAM.

TEMPLATES

1. TEMPLATE FOR PC AGREEMENT

DRAFT PARENTING COORDINATION AGREEMENT

ENTERED INTO BY AND BETWEEN

..... (THE PARENTS)

AND

..... (THE PC)

1 THE APPOINTMENT OF THE PARENTING COORDINATOR (PC)

- 1.1 [Insert PC's name] is appointed as PC by consent order of the court or by mutual agreement.
- 1.2 This agreement governs the working relationship between the parents and the PC
- 1.3 The parents acknowledge and agree that [insert PCs name] has the requisite professional qualifications and professional skills to provide the services of PC. The parties have taken note of the PC's CV and acknowledge that the PC is suitably qualified.
- 1.4 The parties acknowledge and agree that the PC is functioning in a specific role as a PC and not as a mental health or legal practitioner for either parent, the family or the child(ren). Any comments or suggestions made by the PC while fulfilling her/his responsibilities under this contract shall not be construed as counselling, therapeutic or legal advice.
- 1.5 Subject to this agreement or further court order, the PC is appointed for a term ofmonths after the date that all parties sign this agreement.
- 1.6 All of the parties by mutual agreement in writing at least 2 months before expiry date of the PC's term may renew the PC's appointment. The PC may choose not to renew such appointment at the PC's sole discretion.
- 1.7 Neither parent may unilaterally terminate the PC Agreement. Both parents may jointly terminate this Agreement in writing at any time.
- 1.8 The PC may resign any time s/he determines the resignation to be in the best interests of the child/ren, or if the PC is unable to serve out his/ her term. The PC need not provide reasons for his/her resignation.
- 1.9 Any rulings made shall continue in full force and effect until amended by either a replacement PC or the court.

- 2 **ROLE AND FUNCTIONS OF THE PARENTING COORDINATOR**
- 2.1 The PC will assist the parents to resolve parenting issues emphasizing and promoting the best interests of the children and minimizing parental conflict.
- 2.2 The PC's function includes both a consensus building and decision making components. The PC's role includes mediation, education and negotiation (although the PC does not act in a traditional mediation role) and dispute resolution. Depending on the terms of the PC agreement, the responsibilities may necessitate the PC issuing a directive. The parents acknowledge that, unlike the process of mediation in other contexts, they are unable to withdraw from the process of Parenting Coordination.
- 2.3 To carry out this role, the PC may at his/her discretion:
- 2.3.1 meet with the parents jointly or individually, and/or with their children when the PC decides it is appropriate, with the timing, frequency and duration of meetings determined by the PC;
- 2.3.2 educate the parents about communication with each other and with their child/ren;
- 2.3.3 refer the parents to appropriate resources about parenting, communication techniques, dispute resolution or personal coaching, therapy or other related services;
- 2.3.4 consult with third parties, including other parenting coordinators, counsellors, mental health professionals and independent legal counsel;
- 2.3.5 attempt to resolve a dispute; and,
- 2.3.6 if agreement cannot be reached on that dispute, resolve the issue by way of issuing a directive, binding on the parents.
- 2.4 Where the PC issues a directive, it is effective on the date that the directive is issued or on a later date specified by the PC.
- 2.5 The PC should assist the parties consistent with the role and functions of the PC as set out in the Court Order.
- 2.6 **Assessment Function: The PC**
- 2.6.1 must be alert to any reasonable suspicion of domestic violence directed at anyone, particularly the children. The PC will act in accordance with any protection order in place and take necessary measures to ensure the safety of all participants in the parenting coordination process, including the PC. The parents acknowledge that they must alert the PC to any reasonable suspicion of:

- i. substance abuse by a parent or child and to any cognitive, psychological or psychiatric impairment of a parent or child;
 - ii. neurological difficulties of a parent or child;
 - iii. high conflict personality dynamics;
 - iv. child abuse and/or neglect, physically or otherwise;
- 2.6.2 may communicate by way of joint or separate in-person meetings, telephone conferences, e-mail, or any other form of electronic communication at the sole discretion of the PC;
- 2.6.3 will determine at the PC's discretion whether separate or joint sessions are most appropriate at any particular time, having regard to the safety of the participants if the case involves domestic violence and/or patterns of coercive control;
- 2.6.4 has the authority to meet and/or consult with any person the PC deems relevant.
- 2.6.5 must have access to all documentary information necessary to fulfil the PC's responsibilities, which the parents are responsible to provide.
- 2.7 Dispute Resolution Function: The PC
 - 2.7.1 must attempt to facilitate agreement between the parties on all disputes regarding their children having regard to the nature and urgency (if any) of the dispute;
 - 2.7.2 must facilitate child participation in all disputes concerning the child in accordance with the provisions of the Children's Act.
 - 2.7.3 will only address disputes that are within the authority granted to the PC by the authorising court order and/or agreement between the parties to appoint a PC.
 - 2.7.4 will only issue directives as specifically directed in the authorising court order and/or agreement between the parties to appoint a PC when the parents are unable to reach agreement.
- 2.8 Directive-making Function: the PC
 - 2.8.1 may issue directives to the extent permitted by the appointing court order or agreement between the parties to appoint a PC; and
 - 2.8.2 may be requested by the parties and/ or court to make recommendations or provide reports to the court.
 - 2.8.3 may decide to issue a report.

2.8.4 The PC shall determine the format in which directives will be delivered.

3 TERMS AND AGREEMENT TO COOPERATE

During the term of the PC Agreement, the parents undertake not to initiate or renew court proceedings on matters that are within the scope of the PC's services as defined by this Agreement, without notifying the PC.

4 CONFIDENTIALITY & TRANSPARENCY

The parties acknowledge that:-

4.1 Parenting coordination is not a confidential process for communications among

4.1.1 the parties, their children and the PC;

4.1.2 the PC and other parties relevant to the parenting coordination process; or

4.1.3 the PC and the court

4.2 Subject to:

4.2.1 the legal limitations on confidentiality

4.2.2 permitted professional purposes; and

4.2.3 the express provisions of the authorising court order or agreement.

The PC must maintain confidentiality and information obtained must not be shared outside of the parenting coordination process.

4.3 The parties acknowledge the limitations on confidentiality in particular that:

4.3.1 suspected child abuse or neglect must be reported to the relevant authorities in accordance with section 110 of the Children's Act;

4.3.2 the PC must report to law enforcement or other authorities if the PC has reason to believe that any family member appears to pose a serious risk of harm to self or others.

4.4 The PC will use a methodology that is fair and transparent to both parties and the court. Each party must be given an opportunity to be heard in the process. If one party refuses to cooperate after notice, the PC may continue to resolve the dispute or withdraw from the process in accordance with the governing court order, the agreement between the parties to appoint a PC and/or the PC Agreement.

5 EXPERT EVIDENCE

5.1 The PC has the authority to determine the necessity of

retaining professional(s) to provide expert opinions with respect to respecting any outstanding issues(s) and to direct the parents accordingly.

- 5.2 If a directive has to be issued and issues of law arise, in the PC's sole discretion, the PC is authorized to obtain independent legal advice to assist the PC in the determination of those issues. The parents shall have access to any representations or opinions provided by such counsel. The cost of such counsel shall initially be borne by the parents equally, subject to reapportionment by the PC.

6 BILLING

- 6.1 Prior to the commencement of a parenting coordination appointment, a PC must explain to the parties, the basis upon which all fees are charged, including fees for disbursements, taxes, costs, retainers, deposits, payment methods and any penalties for postponement, cancellation and/or nonappearance, as well as any other financial terms applicable. The fees charged for parenting coordination services shall be based on the actual time expended by the PC.
- 6.2 Activities for which a PC may charge include, without limiting the generality thereof:
- 6.2.1 time spent interviewing parents, children and collateral sources of information;
 - 6.2.2 preparation of agreements; correspondence, decisions and reports;
 - 6.2.3 review of records and correspondence;
 - 6.2.4 telephonic and electronic communication;
 - 6.2.5 meetings; and
 - 6.2.6 cost, time and, if applicable accommodation when the PC is required to travel
- 6.3 The PC will maintain records necessary to support charges for services and expenses and should make a detailed accounting of those charges to the parties.
- 6.4 The PC will request a retainer and/or deposit of R prior to starting a case. The parties should be billed on a regular basis and notified when the retainer and/or deposit is to be replenished.
- 6.5 All fees and costs will be appropriately divided between the parties as directed by the court order of appointment or as agreed in the PC Agreement with the parties. In terms of this order/agreement..... [insert].....
- 6.6 Annual increase shall be applied to the fee structure agreed upon at the time of signing the PC Agreement. The parties

will be notified of the quantum of the increase 30 days before the annual increase is applicable.

7 TERMINATION

7.1 The PC's authority to act ends in accordance with the provisions of the court order, which states
Alternatively, in accordance with the terms of the PC agreement, the PC's authority to act ends

7.2 The PC's appointment may be extended by a further parenting coordination agreement or order, for a period not exceeding 2 years.

7.3 Notwithstanding the provision in 7.1 the PC's appointment may be terminated at any time as follows:

7.3.1 by agreement between the parties;

7.3.2 by an order made on application by either of the parties;

7.3.3 unilaterally by the PC in writing, on notice to the parties or with immediate effect at the sole discretion of the PC.

7.4 Upon termination, the PC will refer the parties to other suitably qualified professionals who can assume the role and responsibilities of a PC for the parties.

8 RECORDING OF SESSIONS AND INTERACTION

Under no circumstances will the recording in any form of any consultation, session or any interaction between the PC and/or the parties be tolerated unless previously agreed to in writing.

9 GRIEVANCES

9.1 Should either/or both of the parties hold any grievance regarding the PC and his/her performance and/or any directives issued by the PC, the party/ies must consult with the PC regarding this grievance.

9.2 Only upon the failure to resolve the grievance shall the party/ies proceed to terminating the authority of the PC.

Signed _____
Name _____

Date _____

Signed _____
Name _____

Date _____

Parent Coordinator

Signed _____
Name _____

Date _____

2. TEMPLATE FOR A PARENTING COORDINATION SUMMARY AND DIRECTIVE

For attention: Mother, via e-mail: xxxxxxxx@xxxxxxx.co.za
Father, via e-mail: xxxxxx@xxxxxxxxx.com

cc: where relevant

1. Introduction: Parenting coordination requested byx..... in terms of paragraph of the Parenting Plan, Annexure “A” of the Court Order issued in the X Court ondate..... under Case No.: (hereafter referred to as “the order”).

(in the first summary, record that both parents have signed the PC agreement).
2. Current dispute: brief description
3. List relevant documents other than the order: e.g. assessment reports, previous summaries, emails received from the parties where applicable.
4. List meetings, telephone consultations relevant to the summary: Ondate..... the PC met withx..... andy..... for x hours.
5. Background to the current dispute: provide a brief background and indicate whether the parents have/have not attempted to resolve the dispute prior to requesting parenting coordination.
6. Summary of the meeting(s), other consultations: list the salient points including agreements reached.
7. Directive(s):
Pre-amble: Having been unable to successfully mediate agreement betweenx..... andy..... and based on the information before me, the following directive is hereby issued deemed to be in the best interests ofchild.....
8. PC’s concerns: If there are concerns/observations made by the PC which do not fall under the previous headings, whether positive or negative, these can be listed here, e.g. an observation that parents seem to have reached agreement on most issues and are willing to compromise, an observation that parents

continue to operate at high levels of conflict despite the child's psychologist having reported that this has a negative effect on child.

Parent Coordinator

Date

3 **TEMPLATE FOR RESIGNATION**

Resignation or withdrawal of a PC occurs in terms of the court order or the agreement between the parties appointing the PC and usually occurs in one of the following circumstances:

- i If so ordered by a court of competent jurisdiction.
- ii By agreement between the parties.
- iii At the end of the term in circumstances where the PC was appointed for a specific term (see Guideline 2.6).
- iv Decided by the PC, usually if one party raises objections to the PC, if the parties do not adhere to directives, if one or both parties act in way that is not in the best interests of a child, or as a result of a lack of payment by one or both parties.
- v If the PC is of the view that a particular family's circumstances are not appropriate for parenting coordination

- 1 In terms of i, ii and iii, the following standard response is recommended:

For attention:the parties.....

.....the registrar.....court.....(optional)

.....mediation organisation.....(if applicable)

.....attorneys.....(if applicable)

..... has been appointed as parenting coordinator in the matter of and in terms of a court order issued in the high court/regional court ondate..... under case number

On ...date..... the PC has been informed in terms of a court order issued incourt..... under case number that the court has ordered his/her resignation as PC. In terms of paragraph..... of the court order referred to above, the PC is obliged to resign under these circumstances and I hereby withdraw as PC with immediate effect.

or

On ...date..... the PC has been informed thatboth parties..... have agreed to his/her removal as PC. In terms of paragraph..... of the court order referred to above, the PC is obliged to resign under these circumstances and I hereby withdraw as PC with immediate effect.

or

On ...date..... the PC has reached the end of his/her term of appointment. The PC has been informed by the parties that they have not reached agreement to the continuation of his/her service. In terms of paragraph..... of the court order referred to above, the PC is obliged to resign under these circumstances and I hereby

withdraw as PC with immediate effect.

2. In terms of iv, the following templates serve as a guideline:

2.1 One party objects to the PC continuing:

If the court order makes provision for a grievance hearing, the PC should first have a grievance hearing with the party laying the grievance before deciding whether to resign or not. It is recommended that a grievance hearing should take place at no charge.

For attention:the parties.....
.....the registrar.....court.....(optional)
.....mediation organisation.....
.....attorneys.....(if applicable)

..... has been appointed as parenting coordinator in the matter of and in terms of a court order issued in the high court/regional court ondate..... under case number

Inparty's..... email of ...date.....,party.... made several statements and allegations regarding my role and performance as PC. To the extent that ...party..... suggests that I have not fulfilled my role as PC in a proper manner, I wish to state for the record that I have at all times conducted the parenting coordination fairly, professionally, with due care and consideration for both parties and with the child/children's best interests being paramount.

I wish to state further that I will not deal with each and every statement and allegation at this stage. This is not to be taken as an admission that they are correct and I reserve the right to deal with them at a later stage should this be necessary.

Having reviewed the parenting coordination process thus far and having attempted to addressparty's..... concerns by holding a grievance hearing in terms of para x of the court order referred to above ondate....., I have come to the conclusion that I cannot assist further and as such it is appropriate for me to resign as PC in this matter. My resignation is effective immediately.

2.2. Where one party/both parties do not co-operate/adhere to directives:

For attention:the parties.....
.....the registrar.....court.....(optional)
.....mediation organisation.....
.....attorneys.....(if applicable)

..... has been appointed as parenting coordinator in the matter of and in terms of a court order issued in the high court/regional court ondate..... under case number

Having reviewed the directives issued since my appointment in ...year....., it is clear to me that my directives have not been followed in a manner which I would have anticipated of parties committed to the parenting coordination process. As such it is appropriate for me to resign as PC in this matter. My resignation is effective immediately.

2.3. Lack of payment:

For attention:the parties.....
.....the registrar.....court.....(optional)
.....mediation organisation.....
.....attorneys.....(if applicable)

..... has been appointed as parenting coordinator in the matter of and in terms of a court order issued in the high court/regional court ondate..... under case number

Despite ongoing requests for payment, I have not received payment for the services rendered as PC in this matter. I have come to the conclusion that I cannot continue to assist further in these circumstances and as such it is appropriate for me to resign as PC in this matter. My resignation is effective immediately.

2.4 In terms of v, the following is recommended:

This usually occurs where there is evidence of domestic violence or severe personality disorders which render the parenting coordination process inappropriate as a result of power imbalances which adversely affect the safety of a party and/or the ability of a party to negotiate a fair agreement and are therefore more appropriately referred back to court.

For attention:the parties.....

.....the registrar.....court.....(optional)
.....mediation organisation.....
.....attorneys.....(if applicable)

..... has been appointed as parenting coordinator in the matter of and in terms of a court order issued in the high court/regional court ondate..... under case number

Having reviewed my involvement in this matter since my appointment inyear....., I have come to the conclusion that parenting coordination is not an appropriate way to deal with your disputes and that following the legal process through the courts is the correct route to follow going forward. As such it is appropriate for me to resign as PC in this matter. My resignation is effective immediately.

Parent Coordinator

Date

SOLUTION FOCUSED MEDIATION

by Fredrike P. Bannink

"Winning will depend on not wanting other people to lose."

--R. Wright. *Nonzero. History, Evolution and Human Cooperation*

INTRODUCTION

Using mediation, conflicts can often be resolved rapidly, economically and at an early stage, with a satisfying outcome for the clients involved. From the perspective of 'game theory' mediation revolves around a non-zero-sum game ('win-win'), whereas a judicial procedure revolves around a zero-sum game ('win-lose'). 'Win-win' means you swim together. 'Lose-lose' means you sink together. 'Win-lose' means you swim and the other party sinks, or if the other party swims, you sink. (Schelling, 1960; Wright, 2000). Mediation can help to form or strengthen relationships encouraging trust and respect or, alternatively, to end relationships in as pleasant a manner as possible. Not all forms of mediation accomplish the same goals in the same way.

THE SOLUTION FOCUSED MODEL

Solution focused mediation asks: What would you prefer instead of the conflict? The focus is on the preferred future. Clients are considered competent in formulating their own hopes for the future and of devising solutions to make it happen. The mediator's expertise lies in asking solution focused questions and in motivating clients to change. The concept and the methodology differ significantly from other types of mediation. Conversations become more positive and shorter; ensuring that solution focused mediation is also cost-effective.

Developed during the 1980s by De Shazer, Berg and colleagues, the solution focused model expands upon the findings of Watzlawick, Weakland and Fish (1974), who found that the attempted solution would sometimes perpetuate the problem and that an understanding of the origins of the problem was not necessary. Propositions of the solution focused model include (De Shazer, 1985):



- *The development of a solution is not necessarily related to the problem (or conflict).* An analysis of the problem is not useful in finding solutions, whereas an analysis of exceptions to the problem is.
- *The clients are the experts.* They determine their preferred future and the road to achieving it. De Shazer (1994) assumes that problems (or conflicts) are subway tokens: they get a person through the gate (to the table of the mediator) but do not determine which train he will take, nor do they determine at which stop he will get off.
- *If it is not broken, do not fix it.* Leave alone what is positive in the clients' perception.
- *If something works, continue with it.* Even though it may be something completely different from what was expected.
- *If something does not work, do something else.* More of the same leads nowhere.

Building solutions is different from problem solving. According to the cause-and-effect 'medical' model, one should explore and analyze the conflict in order to make a diagnosis, before the 'remedy' can be administered. This model is useful where it concerns relatively simple problems, which can be reduced to uncomplicated and distinct causes, for example simple medical or mechanical problems. A disadvantage is that this model is problem focused. If the conflict and its possible causes are studied, a vicious circle may be created with ever increasing problems. The atmosphere becomes loaded with problems, bringing with it the danger of losing sight of solutions.

LOOKING TO THE FUTURE

De Bono (1985) distinguished four dimensions in conflict thinking: is the action *fight*, *negotiate*, *problem solve* or *design*? The *fighting* approach revolves around tactics, strategy and weak points. It includes the language of the courtroom, where winning is the goal. *Negotiating* suggests a compromise, whereby the possibilities are limited to what already exists, rather than envisioning something new. *Problem solving* concerns the analysis of the problem along with its causes. These three ways of thinking about conflict look *backward* at what already exists.

The fourth and best conflict resolution approach is the *design approach*. It is *solution focused* and looks *forward* at what might be created. One possibility is to first determine the end point and then to see what solutions may get us there. Another approach is to simply jump to the end and conceive a 'dream solution'. Its content can be illogical, because it concerns a fantasy. More importantly it can suggest circumstances in which the conflict would no longer exist: '*Imagine the conflict resolved, what would you then be doing differently?*'

Salacuse (1991) mentions a few rules to ensure that clients are 'paddling the same canoe in the same direction'. First, precisely define the goal of the negotiations and investigate new possibilities for creative solutions that serve the interests of all clients. Emphasize the positive aspects of the goal and of the relationship, and stress those moments when agreements are (already) reached and when progress is (already) being made. Salacuse (2000) also discusses the importance of having a vision of the end result. Michelangelo could already see in a block of marble the magnificence of David, as Mozart already heard in his quiet study the overpowering strains of the Requiem. What clients seek is not just help but help with their future: 'Whether an advisor is a doctor, a lawyer, a financial consultant or a psychotherapist, his or her mission is to help the client make a better future' (p. 44).

Mnookin et al. (2000) note that lawyers and clients tend to overlook solutions possibly lying *outside* the field of the original conflict. Frequently, these solutions have *nothing* to do with the formal conflict and the agreement may be of an order that could never be envisaged in a courtroom.

A mediator can only mediate in the future tense (Haynes, Haynes & Fong, 2004). They propose that a mediator uses future focused questions to initiate change: ‘Most clients are highly articulate about what they *do not* want and equally reticent about what they *do* want. However, the mediator is only useful to the clients in helping them to determine what they do want in the future and then helping them decide how they can get what they want. It is difficult for the mediator to help clients not get what they do not want, which is what clients expect if the mediator dwells with them on the past’ (p. 7).

SOLUTION FOCUSED MEDIATION IN PRACTICE

Solution focused conversations revolve around four main questions: 1) What is your best hope? 2) What difference would that make? 3) What is already working towards it? 4) What would be the next step?

- *What is your best hope?* The first question follows introductions, an explanation of solution focused mediation, and a presentation of the structure and rules of play. It focuses on what needs to come out of the mediation. Clients may react to this with a (brief) description of the conflict, to which the mediator listens with respect, or they may immediately indicate their hopes and wishes. In solution focused mediation it is important to both acknowledge and validate the influences of the conflict *and* to help clients to change the situation. It may be helpful to give clients one opportunity to say what needs to be said at the start of the mediation to reduce reverberating of negative emotions.
- *Developing a clearly formulated (mutual) goal.* Clients are invited to describe their (shared) preferred future: What difference would that make? Sometimes the *miracle question* is put forward: ‘Imagine a miracle occurring tonight that would (sufficiently) solve the conflict which brought you here, but you were unaware of this as you were asleep. What would be the first sign tomorrow morning that you would tell you that this miracle has happened? What would be different (between you)? ‘What would you be doing differently?’
- *Assessing motivation to change.* The mediator assesses the relationship with each client. Did the participant personally come forward in search of help? Is the participant suffering emotionally, but does not (yet) see herself as part of the conflict and/or the solution? Does the participant see himself as part of the conflict and/or solution and is motivated to change his behavior?

The solution focused mediator goes beyond the verification of commitment: he is trained in relating to the existing motivation and in stimulating change. This early assessment of each client’s level of motivation is of essential importance for the strategy of the mediator.

- *Exploring the exceptions.* There are always exceptions to the problem (Wittgenstein, 1968). Questions are asked regarding the moments when the conflict is or was less serious and who does what to bring these exceptions about. The mediator can also ask about moments that already meet (to a degree) the clients’ preferred future.
- *Utilizing competence questions.* The mediator evaluates the clients’ competences through questions such as: ‘How did you do that? How did you decide to do that? How did you manage to do that?’ The answers are empowering and may help reveal whether something which helps or has helped at an earlier stage can be repeated (*if it works, continue with it*).

- *Utilizing scaling questions* (10 = very good, 0 = very bad). On a relationship scale 10 would mean 'pure collaboration', clients having identical preferences regarding the outcome and 0 would mean 'pure conflict' (Schelling, 1960). Scaling questions can be asked in order for the mediator to assess improvement. 'What is already working in the right direction? What else? And what else?' Scaling questions can also serve to measure and speed up progress in the mediation, to measure and stimulate motivation and confidence that the goal can be achieved. 'What would be the next step?' is a nice way to continue the conversation.
- *Feedback at the end of the session*. At the end of a solution focused conversation the mediator may formulate feedback for the clients, which contains compliments and usually some homework suggestions. The compliments emphasize what clients are already constructively doing in order to reach their goal and can be seen as a form of positive reinforcement. The suggestions indicate areas requiring attention by the clients or further actions to reach a higher point on the scale. The solution focused mediator also invites the clients to give their feedback at the end of every session.
- *Evaluating progress*. Progress is evaluated in every session on a scale of 10 (goal achieved) to 0 (worst situation the clients can imagine). The conversation continues to explore what is yet to be done before the clients would consider the preferred future (sufficiently) reached and would deem the mediation process complete. Every solution focused conversation is considered the final one; at the end of every conversation the mediator asks whether another meeting is still considered necessary. If the clients deem that it is, they determine the scheduling of the next meeting.
- The *attitude of the mediator* is one of 'not knowing' and 'leading from one step behind'. In a sense the mediator stands behind the clients and prods them with solution focused questions, inviting them to look at their preferred future and defining solutions to get there.

See Table 1 for an overview of differences between problem focused and solution focused mediation.

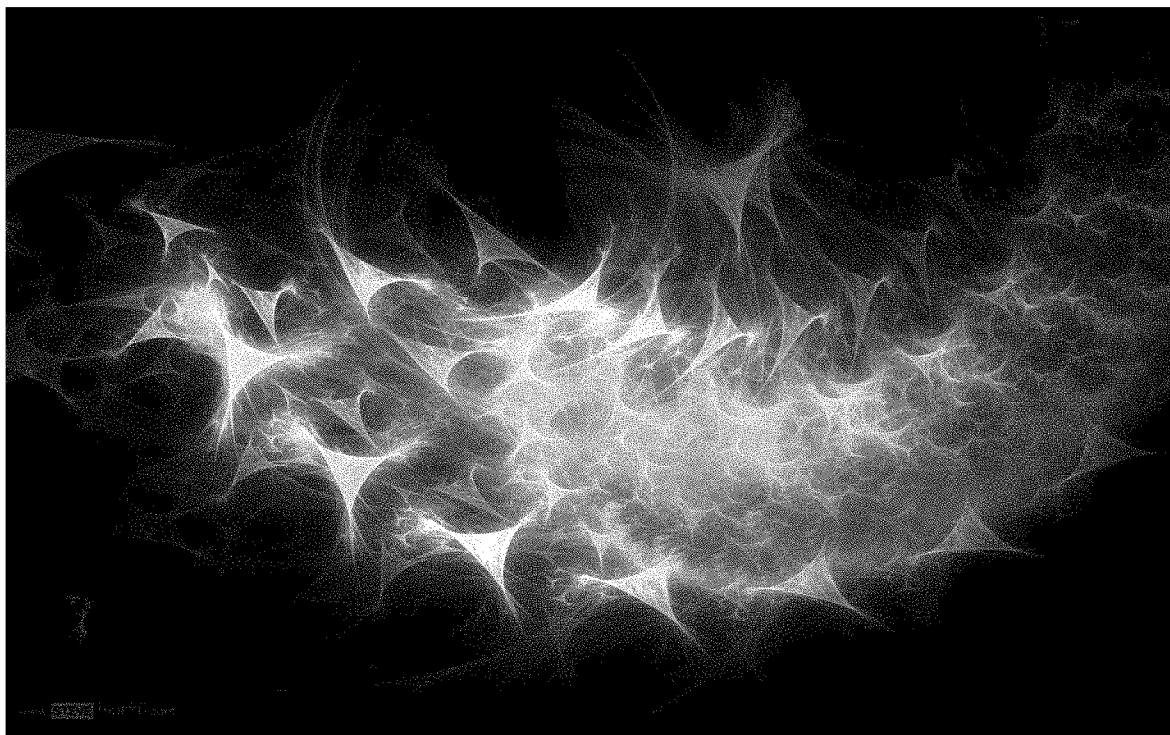


Table 1

Problem-Focused Mediation	Solution-Focused Mediation
Past/present-oriented	Future-oriented
Conversations about what clients do not want (the conflict)	Conversations about what clients do want instead of the conflict (preferred future)
Focus on the conflict: exploring and analyzing the conflict	Focus on exceptions to the conflict: exploring and analyzing the exceptions
Conversations about the same and impossibilities	Conversations about differences and possibilities
Conversations for insight and working through. Conversations about blame and invalidation	Conversations for accountability and action. No invitations to blame and invalidation. Insight may come during or after mediation
Clients are sometimes seen as not motivated (resistance)	Clients are seen as motivated (although their goal may not be the goal of the mediator)
Client is sometimes viewed as incompetent (deficit model)	Client is always viewed as competent, having strengths and abilities (resource model)
Mediator gives advice to client: he is the expert	Mediator asks questions: clients are the experts. Attitude of the mediator is 'not-knowing' and 'leading from one step behind'
Mediators theory of change	Client's theory of change
Expression of affect is goal of mediation	Goals are individualized for all clients and do not necessarily involve expression of affect
Recognition and empowerment are goals of mediation	Recognition and empowerment can be means in reaching the preferred future
Interpretation	Acknowledgement, validation and opening possibilities
Big changes are needed	Small changes are often sufficient
New skills have to be learned	Nothing new has to be learned: clients are competent and have made changes before
Maybe feedback from clients at end of mediation	Feedback from clients at the end of every session
Long-term mediation	Variable/individualized length of mediation: often short-term mediation
Mediator indicates end of mediation	Clients indicate end of mediation
Success in mediation is defined as the resolution of the conflict	Success in mediation is defined as the reaching of the preferred outcome, which may be different from (or better than) the resolution of the conflict

CONCLUDING REMARKS

In mediation the measure of success is not whether one client wins at the other client's expense, but whether he gets what he wants *because* he enables the other to achieve his dreams and to do what he wants. Mediators could be trained to help their clients design their dreams and solutions and assist them in the motivation to change. Clients can be motivated to work hard to achieve their goal.

Research has shown that solution focused conversations have a positive effect in less time and that they satisfy the client's need for autonomy more than problem focused conversations (Stams et al., 2006). The solution focused model has proved to be applicable in all situations where there is the possibility of a conversation between client and professional, in (mental) health care (De Shazer, 1985; De Jong & Berg, 2002; Bannink, 2006, 2007, 2008c; Bakker & Bannink, 2008), in management and coaching (Cauffman, 2003, Stam & Bannink, 2008), in education (Goei & Bannink, 2005), in working with mentally retarded people (Roeden & Bannink, 2007) and in mediation (Bannink, 2006ac, 2008abd). The solution focused model helps clients *and* mediators create their future with a difference.

CASE EXAMPLE: SOLUTION FOCUSED MEDIATION

Driving to work one morning Ben Johnston (age 44) is hit from behind by a van while waiting at a traffic light. The collision is not too serious, with damage limited to the back of the car. The driver of the van apologizes and the accident claim forms are completed.

A few days later Ben begins to experience neck pain. The pain increases, he is unable to continue his job as a construction worker and remains at home. He is diagnosed with whiplash.

Two months later Ben is still unable to work: his condition has not improved. He is considering making a compensation claim and on more than one occasion he calls the van driver's insurance company, with discussions becoming increasingly heated. Due to the lack of progress, he engages a lawyer to act on his behalf. The conflict escalates: the insurance company states that the seriousness of the whiplash injury cannot be solely the result of a small collision and that the complaints are probably mostly psychological. A connection with problems at work at the time of the collision is suggested. Finally the insurance company offers a settlement of \$10,000.

Ben and his lawyer do not accept this proposal, which in their view is much too low – Ben is at risk of losing his job – and initiate legal proceedings against the insurance company. The company responds by requesting an independent report from both an orthopedic specialist and a psychiatrist. Ben reacts furiously to the suggestion that he has psychological problems and later, following an emotional confrontation in court, the judge proposes mediation. After some hesitation the parties agree.

Seven months after the collision the first meeting takes place. Ben, his lawyer, a representative of the insurance company (Fred), and a company lawyer are all present.

The mediator welcomes everyone and gives an explanation of the (solution focused) mediation procedure. The focus in the conversations will be on what those concerned would like instead of the conflict and how they can achieve this, rather than on the conflict itself and what has already transpired.

The mediator also *compliments* everyone's willingness to mediate: all appear motivated to resolve this case through mediation. The mediator gives Ben and Fred the opportunity to briefly express their emotions; they get '*one chance to say what definitely needs to be said*'. Ben vents his anger about the slow progress and the demands made by the insurance company. The mediator gives *recognition* to Ben's anger and concerns: they are understandable. Fred indicates that he would like to resolve the case fairly. In addition he says that he can understand that Ben is worried about his future. This remark lessens the tension in the room.

The mediator then asks *what they are hoping for* and *what difference that would make (goal formulation)*. Ben is hoping for a quick conclusion. He is not willing to cooperate with respect to the proposed medical examinations; he finds the necessity for a psychiatric report particularly ridiculous. The *difference* for him would be that he would no longer need to feel insecure about the outcome of this lengthy case and he could put it all in the past. He feels angry and is not sleeping well. He is also worried about his health and about keeping his job. The mediator asks what he would like to see *instead* of the worry and anger if his hope were to become reality. Ben states that he would then sleep well again and his mood would improve. Furthermore he would feel confident that he could continue with his life.

Fred says that he has no desire to prolong the case, he too is hoping for a quick settlement. For him the *difference* would be that he would be free of this emotional man and that he would feel like he has settled the case in a decent and proper manner.

Then, the mediator asks *what is already going in the right direction* in order to achieve their goal. It appears that Ben is surprised about the insurance company's willingness to engage in mediation, apparently he had not expected it. Also helpful is the fact that at the table they talk more calmly than they did on the telephone. Fred's sympathetic remark is also constructive. Moreover, both sides consider the presence and support of both lawyers, specialized in physical injuries, to be beneficial. Again the mediator gives *compliments* for the steps that have already been taken in the right direction.

The mediator asks a *scaling question*: if a 10 is total cooperation and a 0 is pure conflict, where would both say they are right now? Ben gives a 4, Fred a 5.

At the end of the first meeting the mediator asks Ben and Fred if they would find a return visit useful. Both agree and schedule another appointment. The mediator ends the meeting with the request that in the meantime both reflect on *what could be the next step*. Which step can they take themselves and which step would they like to see the other person take? They will discuss this with their lawyers in the intervening period and focus on this in the next meeting.

At Ben and Fred's request, the second and final meeting takes place three weeks later. Both lawyers are again present. The mediator opens the conversation with a question relating to *what is better*. In the past weeks Ben has begun to feel better, his anger has diminished to some extent. However, the neck pain persists. Fred is pleased that the first meeting put both on speaking terms: the air has cleared somewhat. This is also evident from the fact that Ben and Fred begin the session with a handshake. The mediator *compliments* both on this progress.

As a proposal for *the next step* the insurance company lawyer offers an amount of \$25,000. As a *next step* Ben and his lawyer see compensation of \$50,000 to be acceptable. After some negotiating the lawyers arrive at an amount of \$40,000, payable within a month as compensation for material damages

and loss of working ability. This is included in the settlement agreement which is signed at the end of the meeting.

Ben is visibly relieved that the case has ended. He says that he is now able to continue with his life. Fred is satisfied: he feels that the case has been resolved fairly. There are also positive reactions from the lawyers, who had not expected to achieve a satisfying result so quickly. The mediator *gives compliments* to all for their efforts and motivation to reach a solution together. The mediation is concluded.

*Interestingly, the insurance company referred to in this example has since changed their policy to attempt to hold face-to-face meetings rather than attempt to resolve disputes through telephone conversations.

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Dr. Fredrike P. Bannink (email: solutions@fpbannink.com; website: <http://www.fpbannink.com>) is a clinical psychologist and Master of Dispute Resolution with a training, coaching and mediation practice in Amsterdam. She is a graduate study programme lecturer, trainer for Doctors without Borders and Founding Member of Mediators beyond Borders. She is a mediator at the Amsterdam District Court and founder of the international Solution Focused Conflict Management Network. Her book *Positive Mediation: Solution Focused Conflict Management* will be published in the USA, spring 2009 by AlphaHouse Publishers.

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We asked two experienced ASTC-member trial consultants to react to Dr. Bannink's article on Solution Focused Mediation. On the following pages, Jill Holmquist and Matthew McCusker give us their thoughts on this approach to mediation.

Preparing for the Parenting Coordination Role: Training Needs for Mental Health and Legal Professionals

Joan B. Kelly

ABSTRACT. Specialized training for mental health and legal professionals who undertake the role of the Parenting Coordinator is necessary for working effectively with parents with continuing high conflict. Components of a comprehensive Parenting Coordination training are described including variations in practice models, role distinctions, critical elements of Parenting Coordination Courts Orders or Consent Agreements, Parenting Coordination techniques, case management, clinical and ethical issues, whether to include children in the process, and continuing education needs.

KEYWORDS. Custody and access disputes, divorce, high conflict parents, parenting coordination, training

When legal and mental health professionals decide to undertake the role of the Parenting Coordinator (PC), specialized training is appropriate to understand the unique aspects of the PC role and to function competently and ethically. Although there is growing consensus about the definition and function of the PC role in the United States, some jurisdictions have statutes or local rules which vary from the

Joan B. Kelly is a psychologist who founded and was Director of the Northern California Mediation Center for 20 years.

Address correspondence to Joan B. Kelly, PhD, P.O. Box 7063, Corte Madera, CA 94976-7063. E-mail: jbkellyphd@mindspring.com.

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national trend. The Parenting Coordinator role is defined here in a manner consistent with the AFCC Guidelines for Parenting Coordination (2006), that is, a non-adversarial child-focused dispute resolution process designed to assist high conflict parents settle disputes regarding their children in a timely manner, monitor and facilitate compliance with parenting plans and related court orders, and reduce the amount of damaging conflict to which children are exposed. Parenting Coordination is most often viewed as a post-decree intervention, reserved for parents who have demonstrated an ongoing inability to reach agreements through other means, including private negotiations, mediation, specialized parent education groups, settlement conferences, or trial. Most PCs serve by stipulation of the parents and court order, or by private consent agreements. The PC process combines diverse functions including dispute and case management, parental education, mediation, and, when permitted, arbitration of specified child-related disputes. Currently, most Parenting Coordination services are provided by experienced practitioners in the private sector but can be provided by family court mediators or counselors within court programs as well.

This article briefly considers the rationale for specialized PC training and then describes essential components of Parenting Coordination training including important aspects of the model and process, separation and divorce dynamics for high conflict parents, techniques, practice and clinical issues, and ethical considerations.

RATIONALE FOR SPECIALIZED TRAINING FOR THE PARENTING COORDINATOR ROLE

Parenting Coordinators are most often licensed mental health professionals and/or family lawyers with extensive experience and expertise in divorce and child custody matters and particularly with high conflict parents and cases. Given this experience, why are those who seek to serve as PCs expected to undertake further training? It is the hybrid nature of the role, integrating functions and skills usually performed separately by lawyers, mediators, therapists, or custody evaluators, that requires attention. At the same time, boundaries need to be drawn around the familiar and characteristic functions of the lawyer and therapist so that the PC's work does not inadvertently shift into therapy or adversarial representation with one or both

parents. The cognitive and emotional shifts required to integrate new or different functions and discuss appropriate practice boundaries in this relatively new role are key aspects of a PC's training, as is the unwavering focus on the children's developmental and psychological needs in the settlement of heated parental disputes. The AFCC Task Force on Parenting Coordination underscored the importance of training in Guideline I of the Guidelines for Parenting Coordination (2006), stating that "a PC shall be qualified by education and training to undertake parenting coordination and shall continue to develop professionally in the role" and "shall acquire and maintain professional competence in the parenting coordination process" (Guideline I).

Members of the legal and mental health professions each bring unique knowledge, skills, and experience to the PC role and process but often need additional specialized knowledge which is not characteristic of their traditional training and experience. Many mental health professionals, for example, freely give advice on custody or parenting matters, but are not accustomed to being an arbitrator. They lack experience in drafting clear and precisely written decisions which also anticipate and address the ambiguous "grey areas" which high conflict parents often exploit. Many deal with conflict in marital therapy but may lack the necessary mediation skills to efficiently sort out and settle highly contentious child-related disputes in a timely manner.

Family lawyers are skilled at representing high conflict parents in adversarial proceedings but many have not worked simultaneously with both parents and struggle in the PC role to maintain objectivity and balance with each parent. They sometimes fear that parental conflict will spiral out of control and reject the idea of joint meetings with parents. Most experienced PCs find the combination of joint and separate meetings to be valuable and may serve to enhance the parents' ability to work together (assuming such joint meetings are safe for all participants).

Beyond professional experience, the unique aspects and challenges of this fairly new intervention provide the rationale for specialized training. For example, why do PCs need court orders or consent agreements to be effective, rather than accepting cases without them, and how should PCs set up and begin these difficult cases? Why is it important to define a term of service, and what grievance procedures are critical for parents? What is the value of a non-confidential PC

process and ex parte communications? How and when does a PC decide to arbitrate the parental dispute, instead of continuing other methods of settlement? What personal biases may influence work with difficult parents, and what is the meaning here of impartiality? These and other role and process issues should be the focus of an introductory, comprehensive PC training, integrated with a consideration of the typical behaviors and thinking of high conflict parents and their effects on the PC. One of the added values of PC training is hearing the hard-earned wisdom of seminar leaders who have served in this hybrid role for 10–20 years, refined the function, role, and practice through trial and error, and share openly what they have learned from their mistakes and successes.

IMPORTANT COMPONENTS OF PARENTING COORDINATION TRAININGS

The training components described below are not intended to be exhaustive but represent the basic framework and content of a comprehensive training. PC training will vary in focus, complexity and length based on the trainer's expertise, local training requirements, and prior experience and knowledge of the participants. While PC trainings in the past were typically one day in length, the course content viewed as necessary by experienced PCs and the AFCC Task Force has resulted in the two-day introductory training becoming common. Participant feedback and the author's experience as a trainer suggest that an additional day would be beneficial, either for intensive group analyses of complex parental disputes with examples of arbitration decisions and group exercises in writing and critiquing complex decisions, or an optional day providing the framework and tools for interviewing children in the Parenting Coordination process. Separate workshops for lawyers and mental health professionals can be met through later modules of training intended to develop more specialized knowledge and skills. Readers should refer to Appendix A of the AFCC Guidelines (2006) for a comprehensive listing of topics recommended by the Task Force for competency of the PC. Several jurisdictions have adopted training requirements based on these guidelines. It should be noted that training and experience in family mediation is put forth as a requirement for those undertaking

the Parenting Coordination role in Guideline I of the AFCC Practice Guidelines (2006).

The Parenting Coordination Model, Role, and Process

Training should begin with definitions and objectives of the Parenting Coordination model, for whom the intervention is intended and why, and a thorough discussion of how PC models vary in appointment, the PC's authority, type of disputes addressed, and relationship to the court. Given the primary objectives of the Parenting Coordination process to resolve the continuing stream of co-parental disputes in an efficient, timely, and nonadversarial manner, and to assist parents in implementation and monitoring of the parenting plan and related court orders, training should demonstrate throughout how the PC model is uniquely structured to achieve these objectives. The larger goal is that parental conflict will be diminished over time and parents' reliance on litigation and the courts will be reduced.¹

To communicate the complexities of the Parenting Coordination role, didactic and descriptive materials, anecdotes, case material from parent interviews and phone contacts, discussion of specific disputes and the resulting written decisions, and research relevant to high conflict parents and child outcomes are necessary. Such materials demonstrate the multiple opportunities over the course of a case for PCs to refocus parents on their children's psychological and developmental needs, including learning to leave their children out of their conflict. The unwavering focus on the child in considering, managing, and deciding parental disputes within each family is a central training theme.

Role Distinctions

The critical differences between the PC role and other professional services participants routinely provide must be emphasized throughout. Mental health practitioners sometimes have difficulty with the fact that the PC process is *not* psychotherapy, counseling, or formal psychological assessment for any member of the family, and the agreement or court order signed by parents does not include such clinical services. A case example of a parent or child experiencing serious psychological distress demonstrating an empathic PC suggesting individual psychotherapy if appropriate is useful. Particularly

important is discussing how one uses and draws firm boundaries around the good practices of active inquiry, empathic listening, and psychologically framed observations of the co-parental, parent-child relationships and child and parental behaviors without moving into therapy. Similarly, differences between custody evaluation procedures and assessment of the particulars of a dispute as a PC should be drawn. To understand the details and perspectives of any particular dispute, PCs gather specific information from parents, children, teachers, childcare providers, or physicians but limit their inquiry and analyses to the specific dispute and do not undertake psychological testing or formulate psychological diagnoses.

Similarly, the challenges for lawyers in adapting their training and experience to the PC role are considerable, most notably relinquishing adversarial postures and mindset, polarizing language, and frequent use of closed ended questions, as they transition from client representation mode. Often high conflict parents' thinking is very black and white. Disputes and events are described in highly polarized terms (Johnston & Roseby, 1997; Kelly, 2003a). While this often serves the adversarial process rather well, within the PC practice, a new challenge arises. How does the unwary legal professional working with two stridently angry parents avoid the constant pull to become polarized themselves and to start "representing" one parent against the other, or align with one parent in their decisions? This can, of course, be a challenge for mental health professionals as well.

In a minority of cases, there will be one enraged, vindictive, and uncooperative parent initiating most of the conflict and disputes, and one parent, now emotionally disengaged, who is not fostering or continuing the conflict but is forced to deal with the disputed issues (Friedman, 2004; Kelly 2003, 2005). Decisions consistently "favoring" the better adjusted parent may be entirely appropriate in such cases. However, PCs more often work with two parents with continuing high anger and severe personality disorders, and the decisions of PCs are more likely to "favor" both parents at different times during their term of service. For all professionals, prior mediation training and experience, and ongoing case consultation, is valuable in sustaining a posture of objectivity, and in preserving the distinctions between PC and other professional roles. The dedicated resolve to be squarely in the children's corner in discussions with parents, to reflect their needs and voices in negotiations and in decisions also enables the PC to function in an impartial manner.

Variations in Models

Variations in PC models training should be addressed in some detail, particularly in jurisdictions where programs are not developed or legislation is being considered. While no “one” PC model has been universally adopted there is considerable agreement about a number of significant issues and practices, as indicated in the Best Practices arrived at by consensus of the Task Force responsible for developing the AFCC Guidelines (2006).

Appointment

A first major variation is how the PC is appointed. Most often the PC serves upon stipulation of the parents and/or formal order of the court and this is what provides the authority to the PC for the work to be done. This manner of appointment is viewed as a Best Practice (see Guideline VII, 2006). In some jurisdictions, judicial authority cannot be delegated in custody and access decisions, and PCs receive their authority through private consent agreements between the parents (see Fidler, this issue, for discussion of Ontario, Canada authority and practices). While in some jurisdictions judges can order a PC over the objection of a party, this practice is increasingly seen as inappropriate or unconstitutional and many experienced PCs believe this not only results in higher parental resistance to the PC process but also increases the likelihood of licensing board complaints.

Decision-making Authority

A second major variation is whether the PC has been given the authority to make decisions about parental disputes that have the force of a court order (or are binding) when the parents cannot agree. Most PC models include decision-making or arbitration authority on specified categories of child-related decisions. Without any authority designated to make decisions, the PC is limited to a mediator/educator/co-parent counselor role which is a significantly different model of service. It is also one that is more likely to keep the parents returning to the adversarial system when they cannot agree. Training should provide understanding of the statutory issues involved in a court delegating its exclusive authority to decide matters of custody and access, as well as mediation and arbitration statutes

that might affect practice procedures. Some jurisdictions restrict the authority of the PC to minor child rearing and scheduling disputes, but permit the PC to make recommendations to the court on larger disputed issues such as choice of school, substance abuse testing, psychotherapy, or substantial changes in the parenting plan or access arrangement. Local continuing education programs can develop formats for reporting recommendations and decisions to the court. Regardless of the extent of the PC's authority, which determines the content and boundaries of the role, training should emphasize the importance of adhering to the restrictions in any court order or consent agreement appointing the PC. When no jurisdiction-wide consensus about PCs' authority to make recommendations or arbitrate exists, understanding these issues can empower new PCs to work collaboratively within their jurisdictions to achieve clarity and uniformity in PC orders.

PC models vary in whether the certain decisions made by the PC take effect automatically once communicated or provide a time period for parents to appeal a recommendation or decision.

Type and Range of Disputes

The particular child-related disputes that Parenting Coordinators are authorized by court order or consent agreement to settle varies considerably across jurisdictions, based on local rule and practice or existing or newly adopted statutes. One of the reasons there is growing and enthusiastic judicial support of the PC intervention, other than crowded calendars and frustration with chronically litigating parents, is the recognition that the majority of post-divorce co-parental disputes brought to the court most often are not about changes of custody and access. Rather, they typically involve smaller scale disputes that frequently have no basis in law or psychology for making a judicial decision. While many of these disputes are framed by "best interests" considerations in adversarial processes, they are more often matters of parental convenience, entitlements, lingering angers and intransigence, rather than being central to a child's psychosocial and developmental well-being. These include endless disputes about scheduling holidays, vacations, and summer activities, transitions or neutral exchanges (time/place/means/lateness), selection and scheduling of children's recreational activities, health care management (appointments, medication sharing) child rearing issues

(diet, discipline, homework, bedtimes, curfews), parental attendance at school, athletic and enhancement activities, and much more.

Relationship of the Parenting Coordinator to Court

A central issue for the PC's functioning is how the Parenting Coordination model fits within the legal framework of the jurisdiction, if at all, and the relationship to and responsibilities of the PC to the court.² In many US jurisdictions, the PC has a formal responsibility to the court, yet functions outside of the court. Some court orders provide the PC with quasi-judicial immunity, and the statutory authority for the PC role is spelled out. In some but not all jurisdictions, the court order specifies that all decisions made by the PC be forwarded to the court as well as to the parties (and any lawyers of record). When the PC has a continuing legal relationship to the court, the court generally assumes responsibility for dealing with noncompliance upon notice of the PC to the parties and the court. In some jurisdictions there is no statutory option for divorce cases to remain open following the final decree, and thus no ongoing relationship between the PC and the court is possible. In these situations, no mechanisms exist for court backup for the Parenting Coordinator's decisions, or for consideration of parents' grievances against the PC, both serious limitations with consequences for effective and ethical functioning. The advantages and disadvantages of these various structural approaches are useful to discuss in training.

Elements in the PC Court Order

Parenting Coordination court orders (or private consent agreements) include common elements that structure and provide guidance for the PC process, the PC, the parents and their lawyers. These are the core of the PC process and examples of court orders and consent agreements should be provided to participants, with discussion of the importance of each element and the impact of variations among models on PC practice. The most universal elements include: statement of appointment, term of service, legal authority and scope of power, quasi-judicial immunity (if available), absence of confidentiality, procedures, specific decision-making areas, communication with parents, children, and other relevant parties, fees and fee allocations, grievance process, resignation of the PC, and expectations regarding reports to court of decisions.

FAMILY DYNAMICS OF SEPARATION AND DIVORCE

Knowledge of the Separation/Divorce Literature

The ability of the PC to understand and deal with the psychological reactions and behaviors of parents with continuing high conflict is much enhanced by familiarity with the social science literature. Three decades of increasingly sophisticated and reliable divorce research has provided useful roadmaps for guiding professional interventions with parents and their children. One of the most important outcomes of this research is the identification of specific risk and protective factors that are significantly associated with children's psychosocial outcomes following separation and divorce. This provides a valid framework for encouraging parents to interact and behave in ways that enhance their children's functioning. Most custody and family law practitioners have a general understanding of the major findings, but lack the specific information that is useful in working with parents. Articles or references to summaries of this more current research focusing on children's adjustment, parental conflict, quality of parenting, and paternal involvement should be included in training materials (Amato, 2005; Clarke-Stewart & Brentano, 2006; Emery, 1999, 2006; Hetherington, 1999; Hetherington & Kelly, 2002; Kelly, 2000, 2005, 2007; Kelly & Emery, 2003).

Parental Conflict

A two-day training might begin with a presentation and discussion of research on high conflict parents: who they are, why they are still angry, and what strategies can be used in working effectively with them (Baris et al., 2001; Eddy, 2006; Friedman, 2004; Johnston & Roseby, 1997; Kelly, 1993a, b). Parents who need a PC intervention are typically a special group for whom the passage of time has not reduced the rage and angry behaviors of at least one if not both parents. The 10–20% of parents who remain in entrenched and high conflict two to three years after separation/divorce are significantly more likely to have severe personality disorders and/or mental illness (Johnston & Roseby, 1997). Understanding the characteristics of parents with severe borderline, dependent, narcissistic, and antisocial personality disorders, why these parents react so strongly to rejection and loss, how the child is used in attempts to re-stabilize their

functioning and punish the other parent, and how personality disorders are exacerbated by stress, conflict and the adversarial system will facilitate more effective work with these difficult clients.

Parental conflict is understood by all professionals dealing with divorcing families to be a major predictor of poor adjustment in children, in particular attacking, sustained conflict. Many professionals are not aware that some aspects of conflict are more damaging for children than others (e.g., intensity of conflict is a better predictor of poor outcomes than frequency), that quality of parenting is negatively affected by high conflict, and that buffers have been identified that protect children from the destructive impacts of high conflict. Familiarity with this literature enables PCs to educate parents about the impact of their behaviors and motivate behavioral and attitudinal change. For example, the most destructive type of parental conflict is when one or both parents use their child to express parental anger and rage; this is significantly associated with poorer adjustment when compared to children whose high conflict parents who do not put their children in the middle of their disputes. How the discord is expressed and managed by parents post-divorce is more important than the existence of conflict (Grych, 2005). When high conflict parents encapsulate their conflict, i.e. do not express their conflicts in front of or through their children, their children do not differ in adjustment from children of low conflict parents (Buchanan, Maccoby, & Dornbusch, 1991; Hetherington & Kelly, 2002). These important findings should be shared with high conflict parents and also strongly support the routine use of neutral transitions or exchanges at school and day care rather than at parents' homes to eliminate the possibility of children witnessing face-to-face parental conflict (Kelly, 2005, 2007). Newer research on adolescent and young adult views of their parents' divorces, and in particular their parents' conflict and demeaning comments about the other parent, can be used to mobilize greater understanding and empathy for the emotional stress of their children's predicament (Fabricius & Hall, 2000; Kelly, 2005; Smart, 2002; Smith & Gollop, 2001).

Parenting After Separation and Divorce

Quality of maternal parenting is an equally strong predictor of children's well-being post-separation/divorce as well as the quality and type of paternal involvement. Specific components of mothers'

and fathers' post-divorce parenting (e.g., authoritative discipline, warmth) are linked to child and adolescents' positive adjustment, and certain types of paternal involvement are more effective than others (Amato & Gilbreth, 1999; Amato & Fowler, 2002; Carlson, 2006; Finley & Schwartz, 2004, in press; Hetherington, 1999; Kelly, 2007; Sandler, Miles, Cookston, Braver, in press). Brief summaries of this research in trainings will alert PCs to how parenting might be improved in some families.

Domestic Violence

The AFCC Guidelines specify that PCs shall have training in domestic violence, which most legal and mental health professionals have taken. Newer research on differentiation among types of intimate partner violence is important to include in training, in addition to focusing the PC on their role in ensuring the safety of all family members and compliance with court orders. Knowledge of the impact of intimate partner violence on child and adolescent adjustment, quality of parenting, and parent-child relationships provides a framework for guiding work with these families (Dutton, 2005; Jaffe, Johnston, Crooks, & Bala, 2008; Johnson, 2005, 2006; Kelly & Johnson, 2008; Ver Steegh, 2005).

PARENTING COORDINATION TECHNIQUES AND ISSUES

Beginning and Structuring the PC Process

Informed Consent

Parents often enter the PC process with an inadequate understanding of the nature of the intervention, in part because it is so new and also because of its unusual hybrid nature. Ensuring full understanding of the specific nature of the Parenting Coordination process is critical for a successful intervention and is an ethical obligation (AFCC Guideline II). PCs must describe the power that the parents are relinquishing to the PC, the non-confidential nature of most PC models, the use of ex-parte communications, whether the PC has a duty to report child abuse, and what decisions (if any) the PC has been authorized to make when parents cannot agree on their own

or following PC efforts to mediate. Examples of PC Parent Information Pamphlets can be provided as potential templates for PCs to distribute to parents, lawyers and the bench prior to accepting the case. PCs would be advised to begin the first (joint or separate) session with a discussion of the features of the PC model once again, to ensure parental acceptance and clarify misunderstandings.

Starting the Case

PCs have different criteria and processes for accepting, setting up, and beginning cases, which can be described in training to help participants develop their own process (e.g., what information is requested before deciding whether to accept a case, and again before scheduling the first session). What cases are inappropriate for a PC intervention (e.g., severe mental illness, prior complaints about other PCs to licensing boards, violation of protection orders)? Once the PC receives the signed court order (or consent agreement), what rationale will guide the initial format (a first joint session, followed by separate meetings, or some other safe arrangement dictated by a history of domestic violence and protection orders), and what questions are productive in first sessions? Training participants have many questions about joint vs. separate sessions, how often cases are seen, telephone and email contacts. Many PCs schedule several separate sessions with parents after an initial joint session to understand each parent's concerns and perspectives, and then set up a separate interview with each of the children. Issues and disputes that urgently need attention are dealt with in the first parent sessions if possible. In many cases, subsequent in-person or phone sessions are scheduled only as necessary when disputes arise, or when the PC must organize summer or holiday scheduling disputes that the parents have not resolved on their own. Many cases begin with a backlog of unresolved and heated issues, and thus there may be considerable initial work before the case settles down.

Interviewing Children as Part of the PC Process

There is not consensus among PCs as to whether children should be included in the Parenting Coordination process. This author believes that children should be interviewed or consulted to obtain their views on particular disputes that directly affect their lives and well-being, with exceptions noted below. Children are major social

actors in families, and many are reliable observers of their experiences within the family and their relationship to each parent. Research indicates that a large majority of school-age children and adolescents in separated and divorced families want their voices to be heard and their needs and opinions considered (Gollop, Smith & Taylor, 2000; Kelly, 2002; Smart, 2002; Smith, Taylor, & Tapp, 2003; Taylor, 2006). This research and shifts in perceptions of children's competence make a compelling case for talking with children in this non-adversarial PC model that so heavily focuses on their needs. Most school-aged children and adolescents understand the difference between making a *decision* about custody or access disputes and *expressing their views* on such matters as living arrangements. In interviews they are reminded that their input is seriously considered but not determinative. They come willingly, talk freely, offer suggestions, like being listened to by someone clearly invested in the family's overall well-being who has some power to improve things, and express satisfaction that the PC is searching for ways to reduce their parents' conflict.

With many of the child-related disputes in these cases, talking with children to understand their perspective is beneficial in resolving parental disputes. These are not counseling or therapy sessions, but rather focused, semi-structured, as needed and sporadic interviews designed to gather relevant information in a safe setting with someone who knows the family and its experiences since the separation and divorce (Kelly, 2002). It should be noted, however, that there may be sound reasons for deciding not to talk directly with children over the course of the case. Some PCs are uncomfortable with the idea of interviewing children because of lack of experience and training. Sometimes a child has a productive relationship with a therapist, and the PC is able to consult with the therapist as necessary when a major child decision needs to be made. Some children and adolescents are angry about unpleasant encounters with a series of therapists and custody evaluators over the course of a highly adversarial divorce and the PC decides the child does not need any additional adult intrusion at the present time. If a parent has significant paranoid thinking or other mental illness, it may be ill-advised to talk with his/her children. And with children younger than five or six, the information obtained in an interview context is often not particularly reliable. There are of course many parenting disputes (e.g., which orthodontist to select) for which the child's views are not needed

although the PC may gather information from a child's teacher or physician prior to making decisions.

Clinical Issues for the Parenting Coordinator

Functioning as a PC creates a number of clinical and personal issues that sometimes cause difficulties in judgment and professional behavior. Personal issues include succumbing to the power of the PC role, as evidenced by increasingly arrogant and omnipotent postures and decisions, experiencing high levels of anxiety about parental conflict and disputes, and responding angrily to clients' irrational, demanding behavior with highly punitive responses and decisions. Because the goals of the PC process include helping parents reduce their conflict and assume increasing responsibility for settling their own disputes (when appropriate), PCs need to consider how to manage their responsibilities without fostering undue dependency (e.g. attempting first to use facilitative/mediative processes to see if parents can reach agreement rather than always rushing to arbitration). Burn-out is likely when PCs have too many cases, overloaded schedules, fail to set appropriate limits with angry clients, and do not take vacations. Providing examples of where to set limits with these demanding parents is helpful (does one accept calls at all hours/weekends, does one structure or limit email communications, who determines how urgent a situation is, etc.). The usefulness of case consultation and PC support groups is clear for managing these issues.

Ethical Issues

Discussion of ethical standards for Parenting Coordination, as articulated in the AFCC Guidelines and elsewhere (Sullivan, 2004), should be included in all comprehensive training, and in subsequent continuing education or peer consultation groups.

Maintaining Impartiality

Angry, demanding, irresponsible, seductive, polarizing parents create strong personal reactions in all of us, creating significant psychological and professional challenges in maintaining (or appearing to maintain) impartiality and objectivity in dealing with parents in all interactions (but not the outcomes). Too many cases, too little time,

lack of self-awareness, and failure to examine one's professional, theoretical, and personal biases may contribute to the unjustified alignment of a PC with a parent which can result in failure to objectively gather and consider information that might lead to different decisions. Case examples and techniques for remaining free of bias as each new dispute arises are important to include.

Conflicts of Interest and Dual Roles

Professional and social associations which might compromise (or appear to compromise) the impartial functioning of the PC (AFCC Guideline III) should be discussed. And the issue of dual or multiple sequential roles before, during and after serving as a PC (Guideline IV) raises many questions about the propriety of role shift over time with the family (e.g., from custody evaluator to PC, from PC to mediator, and shifting from child's therapist or guardian *ad litem* to a PC). Group discussion of situations that should or might cause the PC to reject or accept a case are fruitful.

Fees and Billing

Participants raise many questions about billing which can be complex in PC cases. Fee allocations, how to charge for emails, separate phone contacts and in-person sessions, and what happens when a client stops payment are common issues. Because the PC intervention is not therapy or assessment, usually insurance is not billed and payments are the responsibility of the parents (with the exception of a few jurisdictions trying to provide these services *pro bono* or with court funding). Transparent and detailed financial record-keeping and timely billing are essential components in maintaining the parents' views of the PC's integrity (Guideline IX).

Record Keeping

Participants often ask how much detail is appropriate to record in PC work. PC notes and other records are generally not confidential and can be subpoenaed if the PC's decisions are challenged. The author believes that comprehensive notes of parents' concerns, ideas and proposals, agreements, refusals, parenting behaviors, negative (and positive) parental interactions, and notes from children's

interviews of their views and concerns are valuable and important to retain. Complete records enable the PC to reliably document prior disputes, parental demands, requests, behaviors, compliance, and proposals which are helpful in preparing the rationale for decisions or recommendations made to the court, and important in the event there is a Licensing Board complaint. It should be noted that there are different perspectives on record keeping which should be discussed during the training.

DEVELOPING MORE SPECIALIZED KNOWLEDGE AND SKILLS IN SUBSEQUENT CONTINUING EDUCATION

Parenting Coordinators that have taken comprehensive PC training are expected to pursue more specialized training to extend and complement their knowledge and skills (Guideline I(E)). Such training can be organized within local jurisdictions, or offered by statewide and national conferences such as AFCC or other professional interdisciplinary groups. It is helpful to form interdisciplinary PC working groups which can identify training needs and identify the appropriate persons to provide the expertise. Lawyers are generally not familiar with developmental aspects of children's expected behaviors and parent-child relationships and research on factors affecting children's adjustment following separation. Few have the knowledge and skill base for interviewing children (guardian *ad litem*s may have such training). Because lawyer PCs are not representing either party, consultation groups can focus on how to maintain clarity about their role on behalf of the whole family (children and both parents). Mental health professionals may benefit from workshops which analyze parental disputes and practice drafting concise decisions (and their underlying rationales) which are then shared and critiqued. Seminars offering a child-focused semi-structured interview format for listening to children would be beneficial for many practitioners, including a consideration of format, structure of interview, developmental issues, technique, cautions, advantages, and processes for feedback to parents. Case presentations in groups of new and practicing PCs also provide helpful practice knowledge and peer consultation and support.

CONCLUSION

Undertaking the Parenting Coordination role is both challenging and potentially rewarding for those legal and mental health professionals interested in assisting families with entrenched conflict to settle their stream of disputes and provide a more positive psychological environment for the children in these families. Comprehensive training in preparation for the PC role will enable the PC to understand the unique aspects of the Parenting Coordination model and process, learn specialized techniques for setting up and working with these difficult cases, and practice in an ethical and competent manner.

NOTES

1. Although research on the effectiveness of the PC intervention is limited, one unpublished dissertation indicated that parents in 166 cases had 993 court appearances in the year prior to obtaining their PC, and 37 court appearances in the year following the PC appointment Johnston, T. (1994). Summary of research on the decrease of court involvement after the appointment of a special master. (Santa Clara County, CA) unpublished dissertation.

2. In Ontario, Canada, for example, the Parenting Coordinator serves by a private consent agreement which specifies which decisions the PC has the authority to arbitrate. There is no formal relationship to the court.

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