

Parenting Coordination: Expanding ADR in Family Law

The New Hampshire View

by John Cameron and Honey Hastings

The court system is increasingly turning to non-adversarial solutions to family law issues, especially when children are involved. New Hampshire has pending legislation (House Bill 312) that provides for the appointment of a *parenting coordinator* in cases involving the determination or enforcement of parental rights and responsibilities where there is a demonstrated pattern of high conflict between the parents. “High conflict” refers to parents who are unable or unwilling to make parenting decisions on their own, to comply with parenting plans or orders already in place, to reduce their child-related conflicts, or protect their children from the impact of that conflict.

Parenting coordination is a child-focused alternative dispute resolution process. The parenting coordinator is usually a mental health or legal professional with mediation training and experience, often with some additional knowledge of the psychological impact of divorce. The overall objective of parenting coordination is to assist the high conflict parents in implementing parenting plans, ensuring compliance with the details of the plan, resolving conflicts regarding their children and the parenting plan in a timely manner, and protecting and sustaining safe, healthy and meaningful parent-child relationships.

The role of the parenting coordinator can be as basic as mediation to assist the parents in resolving ongoing disagreements within the parenting plan, or as broad as that of “co-parenting arbitration” where decisions in a limited context would be final insofar as the parents’ dispute is concerned. The scope of the parenting coordinator’s role in each specific case would be determined by the court in its discretionary power, although the parents could agree on additional responsibilities as well. However, in cases where domestic violence has been present and one parent seeks to obtain and maintain power and control over the other, the role of the parenting coordinator can become almost purely an enforcement function.

Defining “Parenting Coordinator”

New Hampshire’s legislation defines “Parenting Coordinator” as a “person who assists the parents in resolving issues related to parenting by educating them about communication skills and about children’s needs, and by mediating (and if necessary arbitrating) disputes.” Under the present legislation both parents would need to agree to the appointment of a parenting coordinator.

Parenting coordination dates back to the early 1990s when two psychologists, Carla Garrity and Michael Baris, published a book about high conflict families and the use of parenting coordination. The book’s title is Caught in the Middle: Protecting the Children of High Conflict Divorce. Subsequently there have been other studies and publications giving credibility to parent coordination. There is preliminary evidence that parenting

coordination can be quite effective. A 1994 unpublished study by psychologist Dr. Terry Johnson found that parenting coordination reduced the average number of annual court visits in high conflict families from six per case to 0.22 per case in one year.

The parenting coordinator is not a guardian *ad litem*, but the parenting coordinator's role might be exercised in cooperation with a guardian *ad litem* as needed and as appropriate. Appointment of a parenting coordinator would typically require a finding by the court that the parenting issues in a case are complicated, that the parties demonstrate a pattern of continuing high conflict, or that such other conditions exist that affect the best interests of children.

Parenting coordination focuses primarily, but not exclusively, on post-separation/divorce parenting plan disputes between parents. A parenting coordinator can be helpful and effective in resolving disputes in a temporary parenting plan during the pendency of a divorce or parental rights and responsibilities matter, or in assisting in the development of a temporary parenting plan. The timing would be at the discretion of the court or as requested by the parents.

A parenting coordinator would normally be appointed for a specified period of time, such as one or two years. The scope of the parenting coordinator's role in each specific case would be determined by the court and described in the appointment order as is done for guardians *ad litem*. The parents could agree on additional responsibilities as well. The arbitration function is limited to issues related to implementation of the parenting plan, such as exchange times or locations.

One of this article's authors, John Cameron, has had several appointments as a parenting coordinator. His court-ordered responsibilities have varied from case to case and have included: mediating deviations from the parenting schedule and arbitrating impasses when agreement cannot be reached; facilitating the recommendations made in a forensic family assessment; and generally assisting in the resolving of ongoing disputes over implementation of a parenting plan.

The Parenting Coordinator's Authority

The parenting coordinator's decision-making authority could include any or all of the following:

- ? minor alterations in the parenting schedule that do not alter the basic time share allocation;
- ? childcare arrangements;
- ? parenting exchanges and transportation responsibility;
- ? medical, dental and vision care;
- ? counseling and related arrangements for the children;
- ? education, including but not limited to school choice, tutoring, and participation in special education programs;
- ? discipline;

- ? manner and methods of communication between the parties and each party and the children;
- ? scheduling and implementation of telephone contact between parent and child; and other issues that may be ordered by the court or agreed to by the parties.

In carrying out these responsibilities the parenting coordinator would have access to non-parties and, with the parents' permission or a court order, have access to privileged information including school records, physicians, mental health providers, guardians *ad litem*, and other professionals involved with the family. The parenting coordinator would also have access to related court records.

A parenting coordinator should not have the authority to decide issues that would appropriately be the responsibility of the court, such as:

- ? termination of parenting plans or orders;
- ? modification of parenting plans that would reduce one parent's parenting time with the children or that would change the designation of a child's residence for school purposes;
- ? the need for supervised visitation by either parent;
- ? relocation of the residence of children;
- ? the formal and informal religious education of children;
- ? and the need for psychological or psychiatric treatment of either parent.

A parenting coordinator may resign, or be removed for good cause (unless both parties stipulate to the removal), or be substituted.

Education and Training for Parenting Coordinators

The Association of Family and Conciliation Courts (AFCC) recently produced "Guidelines for Parenting Coordination" which discuss, among other things, recommended qualifications for parenting coordinators, including relevant education, training and experience. The AFCC recommends that parenting coordinators (1) have training and experience in family mediation, (2) be a licensed mental health or legal professional in an area relating to families or a certified family mediator with a master's degree in a mental health field; (3) have extensive practical experience working with high conflict families; (4) have training in the parenting coordination process; and (5) acquire and maintain professional competence in the area of parenting coordination. A copy of the Guidelines is available through the AFCC website: <http://www.afccnet.org/pdfs/AFCCGuidelinesforParentingCoordinationnew.pdf>.

In New Hampshire lawyers and therapists who are certified marital mediators meet the first three of AFCC's proposed qualifications. By completing a parenting coordination training program (as the authors have) such certified mediators would be qualified to provide parenting coordination services.

Concerns

The lack of standards and guidelines for parenting coordinators in some jurisdictions where parenting coordination began on a less formal basis proved to be problematic. General appointments of coordinators with unrestricted power can lead to serious unintended consequences. In Kansas, for example, a parenting coordinator, functioning without any real oversight by the court or standards in general changed the residence of a child from the mother to the father (without any motion having been filed) and then restricted the mother's time with the child. In another case, also in Kansas, the parenting coordinator restricted the father's time with the children and then refused to discuss the situation with the father because the father had not paid his portion of the parenting coordinator's fees. As a result, states where parenting coordinators are being appointed and where role limitations have not been previously defined have moved to more carefully define the role, qualifications, limits on power and process of appointing parenting coordinators.

As the concept of parenting coordination expands in the U.S., there grows with it the concern, somewhat borne out in the Kansas experience, that a parenting coordinator could usurp the court's role as final arbiter of family law disputes, thereby threatening the parents' constitutional right to be heard. Jurisdictions now implementing or considering parenting coordination, such as New Hampshire, have attempted to be mindful of this concern by specifying areas of authority not appropriate for a parenting coordinator.

Some jurisdictions require that a decision made by a parenting coordinator be filed with the court. New Hampshire's proposed legislation requires that a written report on decisions and recommendations be provided to the parties and filed with the court as often as ordered by the court. Parties may file an objection to the report or submit the disputed issue for a de novo hearing by the court.

Authority for parenting Coordination

Presently seven states - Idaho, Oklahoma, Colorado, Texas, Minnesota and North Carolina and Oregon - have statutes establishing and governing the function of the parenting coordinator. Legislation is pending in Massachusetts and New Hampshire; Florida provides for parenting coordinators by court rule; and Arizona, California, Georgia, Kansas, New Mexico and Vermont have related statutes or court rules.

The role of parenting coordination fits nicely into New Hampshire's still evolving emphasis on fostering a stable and meaningful involvement by both parents in the lives of their children as seen in the Parental Rights and Responsibilities Act ("The Act") of 2005 (N.H. RSA 461-A) and the state-wide expansion of the Family Division (Family Court). The Act gives courts the authority to order mediation in certain family law cases where parental rights and responsibilities are at issue. The change recognizes the effectiveness

of alternative dispute resolution in minimizing the acrimony often associated with divorce and “custody” battles.

Parenting coordination is not the answer in every case. But it is being seen as an innovative Alternative Dispute Resolution process effective in reducing and helping to minimize the risk of high conflict families repeatedly and unnecessarily returning to court for resolution of disagreements related to the implementation of their parenting plan.

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