

Parenting Coordination: Resolving High Conflict Disputes in the USA

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Research has demonstrated the significant negative impact of ongoing inter-parental conflict on children (PR Amato, 'The Consequences of Divorce for Adults and Children' (2000) 62(4) *Journal of Marriage and the Family* 1269; B Rodgers and J Pryor, *Divorce and separation: The outcomes for children* (Joseph Rowntree Foundation, 1998); J Wallerstein and S Blakeslee, *The unexpected legacy of divorce* (Hyperion, 2000)). In addition to the harm they may be causing their children, 'high conflict' separated and divorced parents have frustrated attorneys and created additional workloads for the courts. In reaction to these issues, courts and state legislatures have often turned to third-party, alternative dispute resolution (ADR) processes such as mediation, arbitration, and parent education for solutions (M Geasler and K Blaisure, '1998 Nationwide survey of court-connected divorce education programs' (1999) 37 *Family & Conciliation Courts Review* 36; J Clare, L Roundtree and E Manley, *Alternative dispute resolution in North Carolina: A new civil procedure* (North Carolina Dispute Resolution Commission, 2003); J Walker and S Hayes, 'Policy, practice and politics: Bargaining in the shadow of Whitehall', in P Herrman (ed), *The Blackwell Handbook of Mediation: Bridging theory, practice, and research* (Blackwell, 2006)).

A recent addition to the ADR spectrum is parenting coordination (PC). Although this practice has been known by different names in different states, 'Special Master' in California, 'Wiseperson' in New Mexico, 'Custody Commissioner' in Hawaii, and 'Family Court Advisor' in Arizona, all of these designations essentially refer to a consistent idea of a child-focused ADR process in which a mental health or legal professional with mediation training and experience assists high conflict families to implement their custody order. Parenting coordinators can act more quickly than court processes or traditional ADR because they are empowered to use a combination of roles and skills including assessment, facilitation, mediation, education, and, in some cases, decision-making (AFCC Task Force on Parenting Coordination, *Guidelines for parenting coordination* (available at: www.afcnet.org/pdfs/AFCCGuidelinesforParentingcoordinationnew.pdf)). North Carolina formalised the role of PC into state law through s 5 of General Statute 50 in October 2005.

While many professionals agree that the power invested in parenting coordinators is an important innovation (Baris et al, *Working with high conflict*

families of divorce: A guide for professionals (Jason Aronson Publishers, 2000)), the practice has raised some legal and ethical questions, especially about the constitutionality of judges granting their authority over child custody to ADR practitioners (C Coates et al, 'Parenting coordination for high conflict families' (2004) 42(2) *Family Court Review* 246; M Sullivan, 'Ethical, legal, and professional practice issues involved in acting as a psychologist parent coordinator in child custody cases' (2004) 42(3) *Family Court Review* 576). One question yet to arise is the impact of PC on vulnerable and culturally diverse families. While North Carolina has often been at the forefront of piloting and assessing new ADR programs (Clare et al, above), in this case, the development of state policy preceded evaluation research.

Although several authors have written 'how-to' guides to the practices and development of PC (eg S Boyan and A Termini, *The psychotherapist as parent coordinator in high conflict divorce: Strategies, and techniques* (Haworth Press, 2004)) to date no published studies have examined the practices and outcomes of PC, although some unpublished research gives us a few insights.

Policy and practice issues

Parenting coordination, designed for high-conflict custody disputes, is a child-focused ADR process in which a parenting coordinator helps parents to create and implement a parenting plan. The functions of a parenting coordinator include assessment, education, case management, conflict management, coaching parents, and in some cases, decision-making for parents. Their multiple roles and decision-making powers related to custody decisions distinguish parenting coordinators from other ADR practitioners, such as family mediators. Another distinguishing feature is the lack of empirical evidence to support the efficacy of the practice before legislation was enacted to provide the service. Quick approval of state laws creating ADR programs is not uncommon, since powerful advocates propose logical arguments about their benefits based on cost-effectiveness, reduction of court time, and improved relations between disputants. While North Carolina has often been at the forefront of assessing new programs (Clare et al, above), PC was a process unsupported by research of any kind before its implementation in 2005.

While most professionals who work with families in conflict agree that the power inherent in multiple

roles provided to a parenting coordinator is an important innovation for high conflict families, some legal and ethical questions have been raised (Baris et al, above). For example, there are concerns about the appearance of impartiality of a professional provided by judicial authority, the lack of confidentiality, disputants' access to judicial review, and the separation and definition of subsequent or overlapping roles, ie acting as a mediator then becoming a parenting coordinator for the same case (Coates et al, above; Sullivan, above). One important question concerns the constitutionality of judges extending authority over custody decisions to a quasi legal-mental health professional, no matter how experienced. Many states have attempted to resolve some of these dilemmas through stringent statutes defining PC, case processing rules, and making them responsible to family courts. Recent research points to ADR program implementation differences even in districts where programs are closely monitored (J Bozzomo and G Scolieri, 'A Survey of unified family courts: An assessment of different jurisdictional models' (2004) 42(1) *Family Court Review* 12). In North Carolina, there are 41 different judicial districts; 11 have a separate Family Courts and only two of the Family Courts have established local rules for parent coordinators. There are at least two known districts without a Family Court that have established local rules for PC, but one of those has seen virtually no cases (A Huffman, *Survey of parenting coordination use in North Carolina Family Court* (2007) unpublished data).

The range of roadblocks and the potential legal and ethical hurdles of this type of hybrid practice has lead practice development for parenting coordinators to focus on stringent qualification guidelines and role definitions by the Association of Family and Conciliation Courts (see www.afccnet.org) and the American Psychological Association (see www.apa.org). Qualifications for parenting coordinators in North Carolina include: a masters or doctorate degree in mental health discipline or law; at least 5 years of professional post-degree experience; and an additional 24 hours of training (North Carolina General Statutes (NCGS) 50-93). As stated above, the extra precautions have been developed to ensure that only the most qualified professionals are doing this work. Having these upfront assurances is one way of promoting the practice and ensuring its quality, despite the lack of empirical evidence to directly support the practice.

While the legislation regarding PC clearly defined the roles, qualifications, and standards for parenting coordinators, the legislation did not specify the state agency that would be responsible for regulating parenting coordinators and their practice. Although the North Carolina Administrative Office of the Courts is the state agency that appears the most logical choice, that agency has presented a lack of clarity as to their role with parenting coordinators. In reality then, local district courts are responsible for maintaining the lists of parenting coordinators, ensuring they are maintaining professional

standards, and following the laws regarding practice. An example of this relates to one of the statutory requirements for parenting coordinators in North Carolina. In order to retain eligibility as a parenting coordinator, one must maintain ongoing attendance at parenting coordinator seminars (NCGS 50-93(b)). These seminars provide continuing education, group discussion, peer review and support and appear to be an important development for the profession, as well as being a quality assurance mechanism. However, an unpublished report from the North Carolina Administrative Office of the Courts shows that of the 11 districts in North Carolina that have Family Courts, only four are maintaining a list of coordinators; none have a court employee participating in or monitoring the PC seminars, and only one is monitoring the continuing educational requirements (Huffman, above). This demonstrates that although some aspects of the policy are in place, there are no mechanisms for monitoring the practice.

The unspoken problem in all the debates and concerns about PC practice is the lack of empirical evidence available to inform discussions of policy and practice development. Leaders in the 'parent' disciplines of PC have created standards establishing best practice, but are also calling for research in this area to ensure that these standards are truly best practice. The research that appears to be most lacking is that which assesses the practices of parent coordinators that some professionals consider legally and ethically debatable, such as the decision-making authority of the coordinators and the impact of the practice on important outcome measures such as numbers of pre- and post-intervention filings, evidence of PC-directed amendments to custody orders, and judicial intervention in the process (Coates et al, above; Sullivan, above).

One unpublished study conducted in Colorado surveyed attorneys, mental health professionals and clients who had worked with hybrid mediation-arbitration practitioners as a part of their custody process (M Vick and R Backerman, *Mediation/Arbitration: Surveys of professionals and clients* (1996), paper presented at the Boulder Interdisciplinary Committee on Child Custody). According to their study, professionals were much more likely to have a positive view of the helpfulness of the process than were the clients, although a majority of clients were satisfied. Also of note was that professionals were likely to overestimate their clients' positive perceptions of the process. The authors of the study speculated that the discrepancy of client and professional perceptions of the impact of parenting coordinators had more to do with the ongoing inter-parental conflict and that parents were less qualified to assess the impact of the process on their situation than the mental health and legal professionals. What is interesting about this research is that it echoes some of the mixed results that demonstrate some client dissatisfaction (balanced with professional and judicial satisfaction) with alternative approaches to traditional court process such as education, mediation, and other support

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services (G Davis et al, *Monitoring publicly funded family mediation* (Legal Services Commission, 2000); R Hughes and J Kirby, 'Strengthening evaluation strategies for divorcing family support services: Perspectives of parent educators, mediators, attorneys and judges' (2000) 49(1) *Family Relations* 53; J Walker, *Information Meetings and Associated Provisions Within the Family Law Act 1996* (Lord Chancellor's Department, 2001)). One source of client dissatisfaction with mediation, in particular, has been that clients wanted mediators to give advice and/or make decisions for them. Although these are against the ethos of mediation, parenting coordinators have the authority to give clients exactly the kind of advice and decision making power they want, presumably circumventing this type of dissatisfaction. Despite the powers clients want, dissatisfaction with this process appears to remain. At this point, it is difficult to determine whether the dissatisfaction comes from the process, outcome, context, or the expectations of the clients, due to the lack of research.

Another research deficit is an understanding of whether PC is effective at reducing conflict in the families for which it is designed. In an unpublished study (*Outcome study on Special Master Cases in Santa Clara County* (1994)), Johnson found a one-year decrease from 993 to 37 court appearances in a sample of 166 cases in which a parenting coordinator was appointed. This appears to show a powerful impact for the PC process on court filings related to custody conflicts, although we can only draw a conceptual link between reduced court filings and reduced conflict. Although no longer-term examinations of PC exist, related data from longer-term studies of family mediation have had mixed results. Some studies of family mediation show significant reductions in conflict and improvement in communication over time compared with litigation (R Emery, 'Divorce mediation: Negotiating agreements and renegotiating relationships' (1995) 44(4) *Family Relations* 377),

while others show more modest impacts or no differences between mediated and litigated divorces (P McCarthy and J Walker, *Evaluating the longer term impact of family mediation: Report to the Joseph Rowntree Foundation* (1996)). Conceptually, PC is a longer-term intervention than family mediation, possibly lasting years rather than months, which may lead to more positive results; however, the high conflict nature of PC cases may balance out any effects of the length of the intervention. Until more efficacy research is done it will be difficult to assess the impact of this process on court filings or parental conflict.

Conclusions and applications

Although PC practice itself has thus far been unsupported by empirical research, research into high conflict families, child custody evaluations, and other related areas in psychology and law has provided a foundation on which to build practice models and frameworks for research. Now that its place in the available range of ADR services has been assured either through laws in some states or local district policies, it seems time to begin evaluating the claims of the best practice models in place.

UK-based mediation organisations like National Family Mediation, the Family Mediators Association, Resolution and Family Mediation Scotland, as well as court-based and governmental organisations like the Children and Family Court Advisory and Support Service (CAFCASS), the Department for Children, Schools and Families or the Legal Services Commission may want to consider the role that PC could play in the range of services offered to high conflict disputing families. Given a history of successfully integrating pilot projects and evaluation research for family conflict resolution, this could prove to be a positive intervention for families and provide much needed data on the processes and effectiveness of PC.