

Report of the Texas Association of Family and Conciliation Courts Taskforce on Parenting Coordination

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History

The AFCC parent organization began examining the issue of parenting coordination early in this century, forming a Taskforce on Parenting Coordination composed of nationally known experts in this emerging field. The initial Taskforce produced a report entitled *Parenting Coordination Implementation Issues* in August of 2003 outlining the various forms and formats of practice that fell under the general heading of "Parenting Coordination." The task force was reconstituted in 2003 and continued its work, expanding to examine best practices in both the United States and Canada.¹

In 2004, in anticipation of growing interest in parenting coordination services in the state, Texas AFCC conducted a formal survey of our members, examining basic issues of role clarity and role delineation. At the same time Texas AFCC was approached regarding input on legislation that was being drafted regarding parenting coordination for the 2005 legislative session. Responses from AFCC members to the survey came from a mix of legal and mental health professionals, however the actual legislation regarding parenting coordination failed to address many of the prevailing opinions noted in the survey. Chief among these was a strong consensus (89%) that to be qualified as a parenting coordinator a practitioner should be a mental health professional. A majority (56%) also noted that a parenting coordinator should be trained as both a mediator and parent educator. A substantial majority of members (74%) also indicated that they believed parenting coordination Services should be non-confidential to allow reporting back to the court.

The AFCC parent organization Taskforce on Parenting Coordination continued its work throughout this time, posting multiple drafts of *Model Standards for Parenting Coordination* for public comment and review. Eventually the name of the document was changed to *Guidelines*

¹ The AFCC Taskforce on Parenting Coordination (2005) *Guidelines for Parenting Coordination*

for Parenting Coordination to indicate the newness of the field and the difficulty in reaching consensus on “standards.”² The AFCC Board of Directors accepted the final report and Guidelines on May 21, 2005.

Unfortunately this direction from the parent organization came too late for our local group to effectively act on it. HB 252 (relating to the use of parenting plans and parenting coordinators in suits affecting the parent-child relationship) had been introduced in February 2005 and had been voted out of the House by April 2005. It was subsequently voted out of the Senate in May 2005 and sent to the governor just days after the parent organization’s years worth of work on this issue came to a close.

Although a number of deficiencies were noted in the current Texas statute in comparison to the recommended guidelines, especially in terms of educational and training requirements for parenting coordinators, the 2007 legislative session saw little change in these areas. Following the close of the 2007 legislative session Texas AFCC formed a Taskforce on Parenting Coordination to examine implementation of the AFCC parent organization *Guidelines for Parenting Coordination* within Texas and make recommendations for the inclusive implementation of the full spectrum of current parenting coordination models in Texas.

Recommendations

Parenting coordination is a maturing field and nationally there are many different theoretical and practice models for services that fall under the broad heading of “parenting coordination.” Few of these models fall under current statutory definitions of parenting coordination in Texas. Additionally while there are differences in professional background of providers in different models there is general agreement that parenting coordination type services require significant advanced training in law, parent education, negotiation, and family systems issues.

While the Taskforce discussed a number of diverse opinions regarding implementation of the *Guidelines for Parenting Coordination*, two main recommendations emerged during its meetings:

- The first recommendation is that current requirements for parenting coordinators and the parenting coordination process should be improved to better reflect currently accepted best practices.
- The second recommendation is adoption of a broader set of services for courts and litigants to choose from in regards to parenting coordination type services. While Texas enacted some of the services that are available nationally under the heading of “parenting coordination” it has yet to adopt the full spectrum of such services. These services (referred to in this document as co-parenting case management in order to differentiate them from statutory parenting coordination services) are another tool that some courts in Texas have been using for years, under various names, without clear underlying statutory authority.

² Supra note 1

Specific recommendations include:³

- Increase education and training requirements for parenting coordinators to include basic and advanced family mediation experience as well as formal parenting coordination training for all parenting coordinators.

Commentary: Given that parenting coordination is now firmly codified as a hybrid ADR procedure it seems only logical that the state should require parenting coordinators to have family ADR training. Issues of positional vs. interest based negotiations and other mediation related issues are core to helping families progress past their disputes and adopt a healthier problem solving strategy. This is reflected in not only the AFCC Guidelines but the *Texas Association for Marriage and Family Therapy Parenting Coordinator Taskforce Recommended Practice Guidelines for a Family Systems Model of Parenting Coordination within the Context of Texas Family Law* report as well. That report notes that “Training and experience in interest-based negotiation style of family mediation” is “highly recommended.” Thus even amongst professionals who have already received extensive training in working with family systems the need for additional training in interest-based negotiations (the core of mediation) is acknowledged.

Additionally the 16 hours of parenting coordination training that is currently required should apply across the board to all persons functioning as parenting coordinators.⁴ Given the hybrid nature of parenting coordination it is illogical that someone without advanced training in parenting coordination will be well versed in the intricacies of the role and properly prepared for the cases they might encounter. This is also consistent with various professional codes of ethics that require advanced training when engaged in specialty areas.

- Improve ethical requirements by creating explicit language regarding disclosure of potential conflicts of interest or bias based on previous knowledge. Forbid dual roles and require disclosure of communications with attorneys.⁵

Commentary: The role of a parenting coordinator is highly sensitive and one in which significant trust is placed in the parenting coordinator. The parenting coordinator must hold themselves to the highest ethical levels in terms of conflict of interest issues in order to serve as an honest broker for the family.

Ethically dual roles are problematic (and highly restricted) for many professionals. Attorneys, therapists, and others who may have had a previous relationship with a family member bring history to the process that may undermine their effectiveness as a parenting coordinator. A parenting coordinator who goes on to serve in one of these other roles with a family may be seen in hindsight as self-serving, and compromises the integrity of the process.

³ Detailed example statutory language reflecting these recommendations is attached as Appendix A.

⁴ Again, even the TAMFT report recommends “A minimum 16-hour course in parenting coordination shall be taken by all PCs”

⁵ The language included in Appendix A is similar to new ethical requirements for providers of social studies.

A noted exception to this is that of a co-parenting educator who may have encountered family members previously as they have attended court-ordered parenting classes. Such educators are not involved in a direct relationship with the family members, but rather are generally delivering content in a multi-family classroom situation that does not necessarily lead to individual connections.⁶ Certainly if a co-parenting educator is aware of involvement with a family member prior to being assigned as a parenting coordinator this would be something to be disclosed and considered by the court prior to appointment.

Finally parenting coordination is intended to be a fair and balanced process. When a parenting coordinator engages in one-sided communication with an attorney involved with the case without disclosing that contact to the other attorneys involved this may be seen as impinging on the parenting coordinators neutrality.

- Remove restrictions to parents unilaterally terminating parenting coordination services.

Commentary: Parenting coordination as defined in Texas is a completely and absolutely confidential process. It is effectively an area that cannot be examined by the courts in the same way that the courts cannot pierce mediation sessions. As such any showing of “good cause” to remove a parenting coordinator may be quite difficult, if not outright antithetical to the confidentiality duty imposed on the parties and attorneys involved. Additionally it is illogical to attempt to force parties to continue in a confidential process where one party may be undermining or sabotaging the process without fear of consequence. Parents and children have the right to expect that courts will help move cases as swiftly as possible, and when one parent is not merely recalcitrant but is in actuality a bad actor that right can be undermined. Such families may be better suited for other services and should have a way to swiftly exit a parenting coordination process that has broken down.

- Enact legislation to provide statutory authority for co-parenting case management services.

Commentary: Co-parenting case management is a term that is used here to differentiate additional services that fall under the broad spectrum of “parenting coordination” from statutorily defined parenting coordination services in Texas. Such services should include the following provisions:

Qualifications –

In addition to having background training in parenting coordination (including the increased education and training issues noted above) a co-parenting case manager engages in a role requiring additional specialization. While likely that courts would select mental health professionals, family life educators, and attorneys for different cases based on their individual areas of expertise, license to practice as a mental health professional, national certification as a family life educator, and/or license to practice as an attorney

⁶ Once again referring to the TAMFT report it notes such dual roles should avoid conditions and multiple relationships that could interfere with their impartiality or create a professional conflict, such as personal relationships and in “therapy, consultant, coach, or another mental health role” with clients.

demonstrates a minimum level of competence in dealing with extremely complex human relationship issues. Such license/certification should be mandatory for co-parenting case manager.

Additionally, given the possible decision making functions of a co-parenting case manager, no matter how limited, additional training in arbitration procedures, ethics, and decision reporting is appropriate. This type of training for family law cases is offered frequently throughout the year nationally, and has been offered several times in Texas.

Conflicts of interest & Bias –

The same requirements as discussed above for parenting coordinators should also apply to co-parenting case manager.

Decision-making authority –

Courts should be provided with the option to assign minor decision-making authority to the co-parenting case manager in order to implement or clarify provision of a pre-existing court order, or to make short-term decisions regarding time sensitive issues.

Often it is the inability to make even simple decisions that impedes a family from moving past conflict and into a healthy co-parenting relationship. Once families begin to have resolution of minor day-to-day parenting issues, including modeling appropriate child-centered decision making skills, they may be able to move forward in a healthier fashion rather than remaining in the impasse of indecision. Only when parents fail to reach their own decisions should a co-parenting case manager be involved in any decision making, further encouraging parents to take responsibility for working out their co-parenting issues rather than continuing to abandon them to others.

Decision-making authority of the co-parenting case manager is designed to be consistent with the court order but factors in the possibility that there may be time sensitive issues⁷ that are not fully envisioned by the court order. Appendix A includes example procedures for documenting such decisions and submitting them to the court and attorneys of record. Procedures for court review of a co-parenting case manager decision are also noted.

Record keeping and reporting –

Proper record keeping is a part of any professional service. Co-parenting case management is not intended to be a confidential process, and as such records should be open to review. As co-parenting case management is not a treatment service, but rather a forensic monitoring service, parties participating in co-parenting case management services do not fall under the definition of “patients” in the Health and Safety Code.

Complaints regarding and removal of co-parenting case managers –

⁷ Examples seen in practice include a sudden death in the family or the child being called to compete in a geographically distant academic, artistic, or athletic competitions. Such situations are times where it may be necessary that parenting time arrangements be adjusted to appropriately accommodate the child’s needs.

The court should continue to maintain oversight regarding the co-parenting case management process, reserving the right to remove the co-parenting case manager as deemed necessary. This includes if both parties request the co-parenting case manager be removed or on showing of good cause by one of the parties.

Qualified immunity –

Similar to the qualified immunity of certain mediators, qualified immunity should be provided for those professionals willing to serve as co-parenting case manager. While this document avoids the use of the stigmatizing term “high conflict,” it is recognized that absent some ongoing conflict there is generally no need for a co-parenting case management services. Certainly there are times when such families will be engage in secondary tactics that increase the litigiousness of a situation. Additionally emotionally labile parties that are unable to address the issues that brought them into co-parenting case management services may inappropriately blame others for their own failings and seek redress inappropriately. Given the judicial oversight that exists of the co-parenting case management process there should be adequate protection of parents’ due process rights and other basic protections of the legal system.

- Finally, for existing parenting coordinators who may not meet the expanded training qualifications a “grace period” in which they may obtain training and remain in service to the courts that they are currently serving should be provided.