

Parenting Coordination in Domestic Violence Cases

By Judge Dale R. Koch and Amy Pincolini-Ford

Parenting coordination is an emerging alternative dispute resolution technique being used to address the problems of highly litigious “high-conflict families”¹ and overburdened, overworked, and under-resourced family court systems.

This article examines parenting coordination in high-conflict cases, the difference between high-conflict and domestic violence cases, the safety implications of parenting coordination for abused parents and their children, and the different approaches being used to enhance the safety of abused parents and their children.

Approximately 10 states have statutes, court rules, or local rules authorizing the use of parenting coordination in child custody cases.² Another three states have pending parenting coordination legislation.³

Parenting coordination seeks to assist high-conflict parents to implement their parenting plan, monitor compliance with the details of the plan, resolve conflicts regarding their children and the parenting plan in a timely manner, and protect and sustain safe, healthy, and meaningful parent-child relationships.⁴ Parenting coordination is child focused⁵ and is designed to resolve disputes between high-conflict parents arising out of an agreed-upon parenting plan, or, in cases where the parties cannot agree, a child custody and visitation order entered by the court. Rather than go back to court to resolve problems arising out of the parenting plan or court order, such as changes to or clarification of parenting time, exchanges of the children, or alterations to the children’s appearance,⁶ the parties may elect to use parenting coordina-

tion to resolve these issues or may be court ordered to do so.

Concerns have been raised about the court’s use of parenting coordination as an inappropriate delegation of judicial decision making. While those concerns are legitimate, they can be largely alleviated by ensuring that judicial oversight continues in those cases and that the parties have expedited access to the court in the event that there is disagreement with a decision made by the coordinator, as well as if the need arises either to replace the coordinator or terminate the use of a parent coordinator. Thus, while enjoying the benefit of quick, regular, and more economical access to a parent coordinator to help parties resolve day-to-day questions and disputes, the parties are not and should not be prohibited from access to the judge handling their case.

The role of the parenting coordinator is not to make major decisions that would change legal or physical custody from one parent to the other or that would substantially change a parenting plan or court order.⁶ This type of decision making is the court’s function.

However, a parenting coordinator, if given authority by the court, may resolve or make recommendations about issues such as:

- health care management;
- child-rearing;
- education or daycare;
- enrichment and extracurricular activities;

- religious observances and education;
- children’s travel and passport arrangements;
- communication between parties regarding the children;
- role of and contact with significant others and extended family;
- substance abuse assessment or testing for either or both parents; and
- parenting classes for either or both parents.⁸

Whether parenting coordination is agreed upon by the parties or court ordered, the court must clearly specify the role of the parenting coordinator. This is especially true for domestic violence cases because parenting coordination was designed primarily for high-conflict cases.

Although the goals of parenting coordination may serve high-conflict cases well, parenting coordination presents safety concerns in domestic violence cases. The terms high-conflict and domestic violence are often used interchangeably within the courts and are often confused, even though these two terms have vastly different meanings.⁹ “High-conflict” has been used to describe more intense and protracted disputes that require considerable court and community resources, and that are marked by a lack of trust between parents, a high level of anger, and a willingness to engage in repetitive litiga-



tion.¹⁰ Because domestic violence cases are marked by many of these same traits, they are often lumped into definitions of high-conflict. However, the term domestic violence refers to an intentional pattern of coercive behavior, including physical violence, sexual violence, threats of harm, economic control, isolation, insults, and emotional control within an intimate relationship in which one partner engages with the purpose of achieving power and control over the other partner.¹¹

As a result of the confusion in and interchangeable use of these terms, domestic violence cases are many times labeled as high-conflict cases. However, the risks and responsive strategies to each type of case are not the same, although they may overlap. The crucial differences between high-conflict cases and domestic violence cases include, among other things:

- The power differential. In high-conflict cases, there is a relatively equal balance of power between the two parties, and the parties are not making safety-based decisions. However, in domestic violence cases this equality of power is not present because the abusing partner believes that he or she is entitled to control the abused parent and children, and the abused parent's decisions often hinge on whether these decisions will compromise his or her safety or that of the children.
- The safety of the abused parent and children should be prioritized after separation in domestic violence cases; this is not necessarily a concern in high-conflict cases.
- In high-conflict cases, generally the conflict does not provide the sole basis for choosing one parent as the sole physical or legal custodian of the children; however, in domestic violence cases, many states mandate by law that the violence alone does provide a basis for awarding physical or legal custody of the children to the non-abusive parent.¹²
- In domestic violence cases, the abuser is likely to minimize and deny the violence, and the abused parent may be unwilling or afraid to disclose the abuse or parenting concerns about the abuser; however, in high-conflict cases, both parents tend to be equally vocal about parenting issues.¹³

In addition to the mislabeling of domestic violence cases as high-conflict cases, current parenting coordination laws also present safety concerns for abused parents and their children. For example:

- Many states with parenting coordination laws or court rules call for parenting coordination specifically in high-conflict cases, which these laws and court rules tend to define as domestic violence cases; or they call for its use in domestic violence cases, without providing specific safety-focused practices and procedures.¹⁴
- The parenting coordination process is not confidential, so abused parents and their

children may be unwilling to disclose ongoing threats or acts of violence or parenting concerns about the abuser and may be at increased risk of harm if information is shared with the abusive parent.¹⁵ When information that puts a party at risk must be disclosed, the parenting coordinator should alert the party of the disclosure in advance so that the party can take any necessary safety precautions.¹⁶

- At least two states using parenting coordination also specifically allow parenting coordinators to exclude attorneys from parenting coordination conferences or interviews.¹⁷ This raises the question as to whether this type of practice may interfere with both parties' due process rights.
- Most states that allow parenting coordination in domestic violence cases do not address domestic violence training in the statute, court rule, or local rule authorizing parenting coordination;¹⁸ require only that the parenting coordinator receive a minimal amount of training, such as one-time only training;¹⁹ or require training on topics such as anger management,²⁰ which is an inappropriate intervention in domestic violence cases that could heighten the danger for abused parents and their children.²¹ This practice

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is especially problematic because parenting coordination is the rule, not the exception, for domestic violence cases in many of these states.²² Domestic violence is a multifaceted issue and needs a parenting coordinator who understands its complexity. Even though a parenting coordinator may have some domestic violence training, he or she may still be unable to assess the presence of domestic violence, its impact on those directly and indirectly affected by it, and its implications for the parenting of each party,²³ or to assess whether the abuser is using parenting coordination for continued access to the abused parent and children.

- Several states do not require parenting coordinators to conduct separate interviews and sessions with parties in domestic violence cases.²⁴ This practice does not prioritize the safety of abused parents and their children or protect abused parents from potential intimidation or coercion by the abuser during parenting coordination.
- Typically, both parties are required to share the costs of parenting coordination, which may be virtually impossible for an abused

parent who has had to flee the abuse and may be starting over. When a party cannot pay the parenting coordination fees, does that party run the risk of adverse actions by the parenting coordinator? While some states give the parenting coordinator authority to require one party to bear the costs of parenting coordination because of that party's behavior,²⁵ it is unclear whether domestic violence can be the basis upon which to require an abuser to pay the entire cost of parenting coordination.

These concerns raise the question whether the use of parent coordinators is ever appropriate in cases involving domestic violence, which mirror the same concerns that were initially raised about the use of mediation in domestic violence cases in Multnomah County, Ore. However, the Multnomah County experience showed that with appropriate training, procedures, safeguards, and opt-out provisions in place, mediation can improve the outcomes for victims of domestic violence over those which they might otherwise experience in contested court proceedings. Thus, although clearly not appropriate in many cases involving a history of domestic violence, mediation continues to be a useful tool if thoughtfully used by the courts in custody and parenting time disputes.

Although the parent coordinator movement is a much more recent concept and its use is not widespread, with the proper use of the same tools developed in the mediation context, it should not be rejected out of hand in all domestic violence cases. However, its appropriateness is predicated upon ensuring that the primary focus is the safety of abused parents and their children.

In an attempt to provide safety for abused parents and their children and to acknowledge the differences between high-conflict and domestic violence cases, the Association of Family and Conciliation Courts' (AFCC) *Guidelines for Parenting Coordination*,²⁶ set forth specific practices and procedures for parenting coordination in cases with domestic violence that are separate and different from the parenting coordination practices and procedures in high-conflict cases. The *Guidelines* recommend that the role of the parenting coordinator should change in domestic violence cases from implementing the parenting plan to enforcing it. In enforcing the plan, the parenting coordinator's role is to "ensure compliance with the details of the [court] order and to test each request for variance from its terms with an eye to protecting the custodial parent's autonomy²⁷ to make decisions based on the children's best interests and guarding against manipulation by the abusing parent."²⁸

The *Guidelines* attempt to increase safety for abused parents and their children by requiring parenting coordinators to:

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- screen prospective cases routinely for domestic violence;
- decline domestic violence cases if they do not have the expertise and procedures in place to manage coercive tactics and the imbalance of power and control in such cases;
- be trained on domestic violence and child maltreatment on a continual basis;
- tailor techniques used in order to avoid giving the abuser the opportunity to continue the pattern of power, control, and coercion;
- conduct interviews and sessions with parties separately;
- adhere to all protection orders; and
- take whatever measures are necessary to ensure the safety of the parties, their children, and the parenting coordinator.²⁹

Another approach to increasing the safety of abused parents and their children who may elect or be required to use parenting coordination is to provide an opt-out provision. In Texas, for example, parties are allowed to opt out of parenting coordination on the basis of domestic violence.³⁰ When a party opts out for this reason, parenting coordination can only go forward if the court finds that the objection is not supported by the evidence. When parenting coordination goes forward, the court must require safety measures be taken, such as ensuring that the parties not be required to have face-to-face contact and that parties be placed in separate rooms during parenting coordination.³¹



Thus, a key component to making these safety-driven approaches work is to provide implementation guidance for states and parenting coordinators. For example, more guidance is needed about screening effectively for domestic violence. This is also true of conducting separate interviews and sessions with parties. Without implementation guidance, the safety of abused parents and their children may be compromised.

Although parenting coordination was designed for high-conflict cases, the prevalence of domestic violence cases mislabeled as high-conflict cases means that parenting coordinators are often working with domes-

tic violence cases even if not identified as such. Making parenting coordination safe for abused parents and their children requires that states and parenting coordinators make the safety of abused parents and their children a priority, understand the difference between high-conflict and domestic violence cases, and have guidance on how to implement safety-driven parenting coordination approaches.

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END NOTES

¹Zollo, N., & Thompson, R. (Jan. 2006). Protecting victims of domestic violence in the parenting coordination process, *Quarterly E-Newsletter*, ABA Commission on Domestic Violence.

²Cameron, J., & Hastings, H. (Feb. 17, 2006). Parenting coordination: Expanding ADR law, *New Hampshire Bar Association Bar News*, online at <http://www.nhbar.org/publications/display-news-issue.asp?id=2881> (last visited April 5, 2006).

³These states include Massachusetts, New Hampshire, and Vermont.

⁴AFCC Task Force. (2006). Guidelines for parenting coordination, *Family Court Review*, 44(1) 164, 165.

⁵*Id.* at 165.

⁶*Id.* at 171-72 (Guideline XI(B)).

⁷*Id.* at 172 (Guideline XI(E)).

⁸*Id.* at 171-72 (Guideline XI(B)).

⁹Jaffe, P., Crooks, C., & Wong, F. (2005). Parenting arrangements after domestic violence: Safety as a priority in judging children's best interest, *Journal of the Center for Families, Children, & the Courts*, 6, 81, 83.

¹⁰*Id.* at 83 (citing Janet R. Johnston (1994) High conflict divorce, *The Future of Children*, 4, 165); ABA Family Law Section (2001). High-conflict custody cases: Reforming the systems for children – [Wingspread] Conference report and action plan, *Family Law Quarterly*, 34, 589.

¹¹*Id.*; Dunford-Jackson, B. L., & Jordan, S. (Winter 2006). Context is everything: Domestic violence in the real world, *Synergy*, 10(1), 6, 7-8.

¹²Approximately 24 states have rebuttable presumption statutes stating that a batterer should not be awarded joint physical and legal custody or sole physical or legal custody. See Alaska Stat. § 25.24.150 (creating a rebuttable presumption that a parent

who has a history of perpetrating domestic violence against the other parent, a child, or a domestic living partner may not be awarded sole legal custody, sole physical custody, joint legal custody, or joint physical custody of the child); S.D. Codified Laws § 25-4-45.5 (rebuttable presumption regarding custody only when there is a conviction of domestic violence); Wis. Code § 767.24 (rebuttable presumption regarding legal custody only).

¹³Dalton, C., Carbon, S., & Olesen, N. (2003). High conflict divorce, violence, and abuse: Implications for custody and visitation decisions, *Juvenile and Family Court Journal*, 54(2) 11, 12.

¹⁴See Ariz. R. Fam. Law Proc. 74; Idaho R. Civ. P. 16; R. Prac. Jefferson Fam. Ct. 707; N.C. Gen. Stat. § 50-90; Lucas County C.P. Dom. Rel. R. 20.01; Okla. Stat. tit. 43 § 120.3.

¹⁵See N.C. Gen. Stat. § 50-90 and Okla. Stat. tit. 43 § 120.3.

¹⁶Dalton, C., Drozd, L., & Wong, F. (2004, revised 2006). *Navigating custody & visitation evaluations in cases with domestic violence: A judge's guide*, 22. Reno, NV: NCJFCJ.

¹⁷See Idaho R. Civ. P. 16 and R. Prac. Jefferson Fam. Ct. 707.

¹⁸See Colo. Rev. Stat. Ann. § 14-10-128.1; R. Prac. Jefferson Fam. Ct. 707; Okla. Stat. tit. 43 § 120.3.

¹⁹See Idaho R. Civ. P. 16; N.C. Gen. Stat. § 50-90; Tex. Fam. Code § 153.610.

²⁰See Idaho R. Civ. P. 16 and Lucas County C.P. Dom. Rel. R. 20.01.

²¹*Supra* note 16, at 26.

²²*Supra* note 14.

²³*Supra* note 16, at 17.

²⁴See Idaho R. Civ. P. 16; R. Prac. Jefferson Fam. Ct. 707; Okla. Stat. tit. 43 § 120.3.

²⁵See N.C. Gen. Stat. § 50-90.

²⁶The Guidelines were developed by the AFCC Task Force on Parenting Coordination, which included a diverse group of professionals from the courts and legal community, child welfare community, domestic violence community, mental health community, and academic community.

²⁷It is important to note that this terminology implies that the custodial parent will be the abused parent; however, this is not always the case. Many times the abusive parent is the custodial parent.

²⁸AFCC Task Force, *supra* note 4, at 165.

²⁹AFCC Task Force, *supra* note 4, at 165-66, 169-71.

³⁰Tex. Fam. Code § 153.605

³¹*Id.*