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Protecting Victims of Domestic Violence in the Parenting Coordination Process

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Over the past several years family courts have recognized parenting coordination as an effective alternative to resolve disputes for overly litigious “high conflict families.” In many jurisdictions “high conflict” includes families where there is or has been domestic violence. As parenting coordination has emerged as an option for domestic violence survivors, it is important for judges, lawyers representing survivors, and parenting coordinators to recognize that there are critical differences between families where there is domestic violence, and other “high conflict” families. These differences often necessitate requesting and implementing special protections for domestic violence survivors and their children who participate in the parenting coordination process. Failure to recognize and address the dynamics of domestic violence can result in the failure to address safety issues as well as the mischaracterization of the victim’s behavior as uncooperative.

The primary distinction between families where there is domestic violence and other high conflict families is that in families where there is abuse, the “conflict” is not mutual, and is instead a result of the batterer’s controlling behavior. Batterers may use the parenting coordination process to threaten victims to gain their compliance, or to manipulate the

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parenting coordinator to gain concessions.² In fact, parenting coordination may augment the power of the abuser if it encourages the victim to be “flexible,” “cooperative” and willing to negotiate. Additionally, in many jurisdictions the parties must pay for the process— often with each parent paying half the cost. If the abuser has been highly litigious, so as to burden the victim financially, the abuser may use the coordination process to continue the financial abuse of the other party. Victims of domestic violence often do not have the resources to either litigate extensively or pay the hourly rates of a professional parenting coordinator. Thus, a victim may make concessions that compromise safety to avoid the additional financial burden of parenting coordination.

There are some domestic violence cases where the appointment of a parenting coordinator, like mandatory mediation, may be inappropriate, and even dangerous. Lawyers representing victims of domestic violence should discuss with their client whether the parenting coordination process is appropriate in their particular case. In some instances, the lawyer might have to oppose the appointment if it is in the client’s best interest to do so.³ In such cases, lawyers might instead negotiate or litigate a final custody order that addresses safety, does not allow for flexibility or interpretation by the abuser, and requires court review of violations of the order.

Whenever a parenting coordinator is appointed, whether by consent or over objection, lawyers should make sure that the court and the parenting coordinator are aware of the history of domestic violence, the impact the violence has had on the victim and the children, and the safety issues posed by the process. Lawyers might consider asking the court to make a specific finding in the order of referral that the parenting coordination process will not jeopardize the safety of a victim or the children. The authority of the coordinator should be clearly defined along with any restrictions, such as that the parenting coordinator meet with the victim and batterer separately. Requesting that the parenting coordinator encourage parallel parenting (parenting autonomously and separately) rather than cooperative parenting (working together and communicating) can enhance victim safety. Orders of referral might also address how the parties will pay the

² See generally, Bancroft, L. (Winter 2002). The Batterer As Parent; Synergy, 6(1), 6-8. (Newsletter of the National Council of Juvenile and Family Court Judges)

³ Although not specifically addressing the issue of domestic violence, courts in several jurisdictions have considered challenges to the parenting coordination process. In the Florida decision *Hastings v. Rigsbee*, 875 So.2d 772, (Fla. 2nd DCA 2004), the court reversed the trial court’s delegation of judicial authority to the parenting coordinator, concluding that it was inappropriate for a parenting coordinator to act as a fact-finder or otherwise perform judicial functions, including conditioning the mother’s visitation on her payment of overdue fees to the parenting coordinator. A California appellate court rejected the routine appointment of parenting coordinators without the consent of both parties, concluding that both parties must agree to any delegation of judicial authority. *Ruisi v. Theriot*, 53 Cal App 4th 1197, 62 Cal Rptr 766 (1st Dist. 1997). The Oklahoma Supreme Court determined that a statute authorizing the appointment of a parenting coordinator over a party’s objection did not violate a party’s equal protection or right to due process. *Barnes v. Barnes*, 2005 OK 1, 107 P 3rd 560 (Ok. Sp. Ct. 2005)

parenting coordinator, and if appropriate, divide the costs based on each party's financial ability rather than shared equally. If the parent coordinator is required due to action of the abuser, attorneys might request that the court order the abuser to pay the full cost of the coordinator. Orders of referral should include provisions that allow a party to ask the court to suspend or terminate the parenting coordination process, and require the court to hold status conferences to monitor the process.

Many parenting coordinators lack training in domestic violence. Lawyers representing victims might request that the court appoint a parenting coordinator who has been properly trained in both the dynamics of domestic violence and appropriate communication methods with both abusers and their victims. Advocates can offer to train the coordinators in the dynamics of abuse as well as provide assistance in safety planning for clients, the children and the coordinator. The Vermont Family Court Mediation Program (VFCMP) is the administrating organization for Parent Coordination in Vermont. The VFCMP often works closely with members of the Vermont Network Against Domestic Violence and domestic violence advocates. There is cross collaboration on trainings and speakers, valuable information exchanges and opportunities for dialogue. Vermont's program can provide information and guidance on training and other issues. (See related article in this newsletter.) Finally, lawyers should ensure that the court has a screening method for parent coordinators to eliminate persons who have been convicted of domestic violence, child abuse, or other crime that would make them unfit to serve.

Parenting coordination is new in many jurisdictions, and it is important for domestic violence advocates to work with the court system and parenting coordinators to ensure that the process adequately protects domestic violence survivors and their children.

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