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## COMMENT

# "Throwing the Baby Out With the Bathwater": Parenting Coordination and Pennsylvania's Decision to Eliminate its Use

SOPHIE B. MASHBURN\*

### I. INTRODUCTION: AN OVERVIEW OF THE PRACTICE OF PARENTING COORDINATION

Parenting coordination is a relatively new<sup>1</sup> ADR practice utilized by courts to assist in resolving high conflict divorce cases.<sup>2</sup> Though considered controversial by some,<sup>3</sup> it can also serve as an effective tool<sup>4</sup> for divorced parents who struggle with regular co-parenting decisions.<sup>5</sup> Parenting coordination is defined as:

A child-focused alternative dispute resolution process in which a mental health or legal professional with mediation training and experience assists high conflict parents to implement their parenting plan by facilitating the resolution of their disputes in a timely manner, educating parents about children's needs, and with prior approval of the parties and/or court, making decisions within the scope of the court order or appointment contract.<sup>6</sup>

Parenting coordination is a "legal-psychological hybrid"<sup>7</sup> and does not neatly fit the mediation-arbitration model,<sup>8</sup> but is rather a distinct form of alternative dispute resolution (ADR).<sup>9</sup>

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1. Matthew J. Sullivan, *Parenting Coordination: Coming of Age?*, 51 FAM. CT. REV. 56, 57 (2013).

2. *Id.*

3. See Allan E. Barsky, *Parenting Coordination: The Risks of Hybrid Conflict Resolution Process*, 27 NEG. J. 7 (2011).

4. Victoria M. Ho, Judge Daniel R. Monaco & Janice S. Rosen, *Parent Coordinators: An Effective New Tool In Resolving Parental Conflict in Divorce*, 74 FLA. B.J. 101 (2000).

5. The Assoc. of Family and Conciliation Courts Task Force on Parenting Coordination, *Guidelines For Parenting Coordination*, 44 FAM. CT. REV. 164, 172 (2006) [hereinafter *Guidelines for Parenting*].

6. *Id.* at 165.

7. Joi T. Montiel, *Is Parenting Authority a Usurpation of Judicial Authority? Harmonizing Authority For, Benefits Of, And Limitations On this Legal-Psychological Hybrid*, 7 TENN. J.L. & POL'Y 362, 364 (2011).

A parenting coordinator fills multiple roles in assisting parents. While coordinators can act as a decision-maker in recurring disputes between divorced parents, the primary goal of parenting coordination is to educate and train parents in ways to effectively resolve their issues and move forward as divorced adults engaging in co-parenting.<sup>10</sup> In this way, parenting coordination not only facilitates an ultimate and binding decision, but also provides a remedial and educational function as well. The ultimate goals of parenting coordination are to reduce the negative impact of high-conflict parenting<sup>11</sup> on the child<sup>12</sup> and to protect the best interests of the child once the court determines custody matters.<sup>13</sup>

Currently, parenting coordination is practiced in over 30 states,<sup>14</sup> and some states have passed parenting coordination statutes or court-ordered rules.<sup>15</sup> Parenting coordination can be set up by statutes, court rules, or through mutual agreements by parties.<sup>16</sup> Judges in jurisdictions without statutory guidance may exercise discretion to order the use of a parenting coordinator as well.<sup>17</sup> Since there is little uniformity in parenting coordination, some organizations such as The Association of Family and Conciliation Courts (AFCC) have developed guidelines for jurisdictions wishing to implement parenting coordination programs.<sup>18</sup> However, as the practice of parenting coordination has grown, there has been wide variance in its structure and practice.<sup>19</sup> Parenting coordination lasted only five years in the state of Pennsylvania before its elimination. In the 2008 case of *Yates v. Yates*, the Pennsylvania Superior Court established the practice by determining parenting coordination was a method to “shield children from the effects of parenting conflicts and help parents in contentious cases comply with custody orders and implement parenting plans.”<sup>20</sup> In 2012, the Superior Court of Pennsylvania upheld a parent’s right to review a parenting coordinator’s decisions in *A.H. v. C.M.*<sup>21</sup> Then in 2013, the Pennsylvania Supreme Court abrogated *Yates* and *A.H. v. C.M.*

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8. Telephone Interview with Simone McCartney, Partner, The McCartney Law Firm, LLC (Oct. 1, 2014).

9. *Id.*

10. Marlene Eskin Moses & Beth A. Townsend, *Parenting Coordinators: The Good, The Bad, and The Ugly*, 48 TENN. B.J. 24, 25 (2012).

11. See generally Phillip M. Stahl, *Personality Traits of Parents And Developmental Needs of Children in High-Conflict Families*, ASSOC. CERTIFIED FAM. L. SPECIALISTS, Winter 1999, No. 3, at 8-16, available at <http://www.parentingafterdivorce.com/articles/highconflict.html>.

12. Robin O. Belcher-Timme et al., *Exploring Best Practices in Parenting Coordination: A National Survey of Current Practices and Practitioners*, 51 FAM. CT. REV. 651, 652 (2013).

13. *Id.* at 653.

14. Sullivan, *supra* note 1, at 57 (citing Fidler, B.J., *Parenting Coordination: Lessons Learned and Key Practice Issues*, CAN. FAM. LAW Q., 2012, No. 3, at 237).

15. Moses & Townsend, *supra* note 10, at 24. The states that have passed parenting coordination statutes or court-ordered rules are as follows: Colorado, Florida, Louisiana, Massachusetts, New Hampshire, North Carolina, Oklahoma, Oregon, and Texas. *Id.*, citing PARENTING COORDINATION CENT., <http://www.parentingcoordinationcentral.com> (last visited Aug. 8, 2015).

16. Sullivan, *supra* note 1, at 56-57.

17. Moses & Townsend, *supra* note 10, at 24.

18. See generally *Guidelines for Parenting*, *supra* note 5 (outlining best practices in parenting coordination: appointment of parenting coordinators, authority of parenting coordinators, and duties of parenting coordinators, etc.).

19. Robin O. Belcher-Timme et al., *supra* note 12, at 653.

20. *Yates v. Yates*, 963 A.2d 535, 539 (Pa. Super. Ct. 2008).

21. *A.H. v. C.M.*, 58 A.3d 823, 827 (Pa. Super. Ct. 2012).

by enacting Rule 1915.11-1.<sup>22</sup> The rule states "[o]nly judges may make decisions in child custody cases. Masters and hearing officers may make recommendations to the court . . . . Any order appointing a parenting coordinator shall be deemed vacated on the date this rule becomes effective."<sup>23</sup>

The passing of the rule was a direct response to a Pennsylvania scandal involving judicial abuse of power in delegating decision-making to parenting coordinators.<sup>24</sup> The Luzerne County "Kids for Cash" scandal<sup>25</sup> concerned two judges who allegedly took \$2.8 million in kickbacks from the builder and co-owner of a private juvenile prison.<sup>26</sup> In an effort to encourage judicial transparency,<sup>27</sup> the Pennsylvania Supreme Court opted for a process whereby judges would be accountable for their decisions, particularly in high-conflict, sensitive custody cases.<sup>28</sup> While some attorneys are lauding the elimination of parenting coordination as a measure to properly vest authority over parenting decisions with judges,<sup>29</sup> others question the propriety of removing a child-focused ADR practice from the table entirely.<sup>30</sup>

This article addresses the legal development of parenting coordination, arguments of proponents and opponents of parenting coordination, and produces a commentary on the effect of the recent Pennsylvania Supreme Court rule on the family law practitioners in Pennsylvania. The following information suggests the Pennsylvania Supreme Court acted hastily in prohibiting a practice that can serve as potential benefit to many families.

## II. ORIGINS OF PARENTING COORDINATION AS AN ADR PRACTICE

### A. ADR and Family Law

Alternative dispute resolution has existed for centuries,<sup>31</sup> but the official ADR movement in the United States emerged from the implementation of the first arbitration law in 1920.<sup>32</sup> The movement for regular inclusion of ADR practices in law grew in the 1960s, and in 1976 the Pound Conference, sponsored by the American Bar Association, would adopt ADR as a "legitimate area of legal

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22. Kelly L. Menzano, *Parenting Coordination Eliminated in Pennsylvania*, THE LEGAL INTELLIGENCER (July 9, 2013) available at [http://www.evergreeneditions.com/article/Parenting\\_Coordination\\_Eliminated\\_In\\_Pennsylvania/1448421/166191/article.html](http://www.evergreeneditions.com/article/Parenting_Coordination_Eliminated_In_Pennsylvania/1448421/166191/article.html).

23. PA. R. C. P. No. 1915-11.1.

24. Ben Present, *Concern Over Judicial Authority Drove Parent Coordinator Elimination*, THE LEGAL INTELLIGENCER (May 7, 2013), [http://www.obermayer.com/files/Ladov\\_Concern\\_Over\\_Judicial\\_Authority.pdf](http://www.obermayer.com/files/Ladov_Concern_Over_Judicial_Authority.pdf).

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* (asking, "[w]hy are we letting judges pass on their authority to somebody outside the judicial due process situation?").

30. Present, *supra* note 24 ("I think it's short-sighted . . . I think that the ones who made the decision didn't necessarily talk to the people in the trenches who it affects day to day.").

31. Amber Murphy Parris, *Alternative Dispute Resolution: The Final Frontier of the Legal Profession?*, 37 J. LEGAL PROF. 295, 297 (2013) (stating the use of ADR has been documented as early as 1800 B.C.).

32. *Id.* at 298.

study.”<sup>33</sup> Though labor law was the first legal discipline to use ADR,<sup>34</sup> the legal community realized ADR would be applicable across many different specialized areas of law: environmental conflicts, job discrimination grievances, international conflicts, and even divorce and child custody conflicts.<sup>35</sup>

Family law is a legal practice that benefits from ADR methods and practices, particularly mediation because of its potential to be emotionally charged. According to the American Psychological Association, 40-50% of marriages end in divorce.<sup>36</sup> ADR has been effective in managing the high number of divorce and custody disputes that arise annually,<sup>37</sup> and reduces legal costs for all parties involved.<sup>38</sup> ADR uses collaborative models of dispute resolution to assist individuals going through divorce in order to minimize conflict and help would-be litigants avoid further conflict in the adversarial courtroom setting.<sup>39</sup> Participants in family law cases have also linked ADR to reduced levels of subsequent litigation, increased judicial efficiency, and high satisfaction rates.<sup>40</sup> It is clear ADR is no longer a mere “trend” in the modern legal landscape, but has rather become a permanent fixture in the practice of law, particularly for family law.<sup>41</sup>

### B. The Advent and Development of Parenting Coordination

Parenting coordination made its debut in family law ADR in the early 1990s<sup>42</sup> in response to high-conflict families that often appeared in courtrooms and consumed court resources at disproportionate rates.<sup>43</sup> With the consent of the parties involved, courts began to delegate limited authority over minor custody issues to mental health professionals to help parents settle differences in the wake of a divorce.<sup>44</sup> The use of case assessment, mediation, case management, and arbitration functions by mental health professionals and attorneys in these high-conflict cases eventually became what is now known as parenting coordination.<sup>45</sup> As the use of parenting coordinators increased, jurisdictions began to create standards defining their role and authority.<sup>46</sup> The Association of Family and Conciliation Courts established formal standards for parenting coordination in 2005, over a decade

33. JOHN KIMPFLER ET AL., OHIO JURISPRUDENCE 5A § 5 (3d ed. 2015).

34. Parris, *supra* note 31, at 296.

35. KIMPFLER ET AL., *supra* note 33, at § 5.

36. *Marriage and Divorce*, AM. PSYCHOL. ASS'N., <http://www.apa.org/topics/divorce/> (last visited Aug. 8, 2015).

37. “Family law may well be the legal area that has the most impact on the highest percentage or ordinary citizens in the United States. Their negative experiences, apart from whether they are happy with the outcome, drive their fellow citizens’ image of our court system.” Robert K. Downs, *Family Law: A Crucible for Change*, 93 ILL. B.J. 436, 436 (2005). See also Christine A. Coates et al., *Special Issue: Models of Collaboration in Family Law: Parenting Coordination for High Conflict Families*, 42 FAM. CT. REV. 246 (April 2004).

38. Stacey Keare, *Reducing the Costs of Civil Litigation: Alternative Dispute Resolution*, PUB. L. RES. INST., <http://gov.uchastings.edu/public-law/docs/plri/adr.pdf> (last visited Aug. 7, 2015).

39. *Id.*

40. Elizabeth Kruse, *ADR, Technology, and New Court Rules-Family Law Trends for the 21st Century*, 21 J. AM. ACAD. MATRIM. LAW. 271 (2008).

41. *Id.*

42. Coates et al., *supra* note 37, at 246.

43. *Id.*

44. *Id.* at 247.

45. *Id.*

46. *Id.*

after its inception<sup>47</sup> in an effort to guide jurisdictions that creating parenting coordination statutes and rules. The guidelines serve as a guide to best practices and model rules for jurisdictions utilizing parenting coordination.

Today, 11 states have Parenting Coordination statutes.<sup>48</sup> Other jurisdictions use court rules to appoint a parenting coordinator, and some judges appoint parenting coordination by a court order in which they define the role of a parenting coordinator on a case-by-case basis.<sup>49</sup> Oklahoma's Parenting Coordinator Act,<sup>50</sup> enacted in 2001, was the first example of a comprehensive statute.<sup>51</sup>

### C. Modern Parenting Coordinator Practices

Statutes and court rules about parenting coordination vary in their detail and scope, but most address the following: the scope of authority of the parenting coordinator, the qualifications of a parenting coordinator, and the reviewing process for decisions rendered by a parenting coordinator.<sup>52</sup> The AFCC sets out the framework for parenting coordinator authority in Guideline VII, VIII, and XI.<sup>53</sup> A court order is *necessary* to establish the scope of authority for the parenting coordinator. Many jurisdictions require and the AFCC recommends parents sign a consent agreement as well.<sup>54</sup> A parenting coordinator is given only the "authority delegated in the court order or the consent provided by the parties."<sup>55</sup>

Most often, the borders of the parenting coordinator's authority lie within the four corners of the parenting plan already agreed to by the parties and entered by the court.<sup>56</sup> This approach conforms to the idea parenting coordinators are primarily educators and facilitators, rather than decision-makers. Still, it is not uncommon for jurisdictions to grant final authority to parenting coordinators over ancillary<sup>57</sup> parenting issues to serve the goal of judicial efficiency.<sup>58</sup> The AFCC states in its guidelines that the "authority inherent in the role of parenting coordinator is substantial whether stipulated by the parties or assigned by the court."<sup>59</sup>

States enacting parenting coordination statutes outline the authority of the parenting coordinator. For example, in North Carolina, the parenting coordinator role is confined to the following tasks: identifying disputed issues between parents, reducing misunderstandings, clarifying priorities, exploring possibilities of compromise, developing collaborative parenting methods, and complying with the

47. *Guidelines for Parenting*, *supra* note 5.

48. Hon. Leta S. Parks et al., *Defining Parenting Coordination with State Laws*, 49 FAM. CT. REV. 629 (2011).

49. *Id.*

50. OKLA. STAT. ANN. tit.43, § 120.1 (West 2001).

51. Parks et al., *supra* note 48, at 629.

52. *See generally id.* *See also* Kirkland K., *Parenting Coordination (PC) Laws, Rules, and Regulations: A Jurisdictional Comparison*, J. CHILD CUSTODY, Oct. 2008, at 25.

53. *Guidelines for Parenting*, *supra* note 5, at guidelines VII-VIII, XI.

54. *Id.* at guideline VIII.

55. *Id.* at guideline XI.

56. Parks et al., *supra* note 48, at tbl. 1 (compiling a tabular comparison of parenting coordination legislation regarding decision-making authority of parenting coordinators).

57. *Jordan v. Jordan*, 14 A.3d 1136, 1158 (D.C. 2011) (referencing cases out of Pennsylvania, Maryland, and Ohio that provide examples of what a court would consider ancillary parental issues: e.g., custody schedules, communication between the parents, family therapy, and visitation conflicts).

58. *Id.*

59. *Guidelines for Parenting*, *supra* note 5, at 2.

court's order regarding custody, visitation, and guardianship.<sup>60</sup> Outside of those roles, the court is allowed to delegate other duties to the parenting coordinator through a court order.<sup>61</sup> These roles embody a preference for mediation techniques as opposed to arbitration-like decision-making. Idaho is another state that has enacted a statute adopting similar responsibilities for the parenting coordinator. The court defines the authority of the parenting coordinator and the statute states the following as the role of the parenting coordinator:

In addition to those duties as authorized by the court pursuant to the order of appointment, the responsibilities of a parenting coordinator shall include collaborative dispute resolution in parenting. The parenting coordinator shall act to empower the parties in resuming parenting controls and decision-making, and minimize the degree of conflict between the parties for the best interests of the children.<sup>62</sup>

Following suit, South Dakota's statute governing the standards of parenting coordinators likewise reflects a preference for collaborative and empowering practices for divorced parents as well.<sup>63</sup> Each parenting coordination statute today maintains clarity about the parenting coordinator's scope of authority to assist the court in employing parenting coordinators to high-conflict cases effectively.

The first guideline for parenting coordinators adopted by the AFCC regards the qualifications for parenting coordinators.<sup>64</sup> "A parenting coordinator shall be qualified to undertake parenting coordination and shall continue to develop professionally in that role."<sup>65</sup> Subpart B states a parenting coordinator should possess professional licensing credentials.<sup>66</sup> They may be a licensed mental health professional, a legal professional in family law, or a certified family law mediator with a master's degree in a mental health field.<sup>67</sup> The guidelines further stipulate parenting coordinators should have extensive experience with high conflict or litigating parents<sup>68</sup> and should receive specific training in the parenting coordination process. If parenting coordinators feel a case is beyond their skill or expertise, they should decline to assist the parties.<sup>69</sup>

Some states, like Vermont, have specified which areas of professional practice constitute eligibility for becoming a parenting coordinator.<sup>70</sup> Idaho allows parties to select their own parenting coordinator and requires no specific licensing or qualifications,<sup>71</sup> but the parenting coordinator must have an understanding of child development, 20 hours of domestic violence training, and a criminal background check.<sup>72</sup> Oregon, on the other hand, allows the court to select the parent-

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60. N.C. GEN. STAT. § 50-92(a) (2005).

61. *Id.*

62. IDAHO CODE ANN. § 32-717D (3) (2002).

63. S.D. CODIFIED LAWS § 25-4-73(1) (2013).

64. *Guidelines for Parenting*, *supra* note 5, at guideline I.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. Vt. R. S. Ct. Admin. Order No. 42 (Oct. 2007).

71. Parks et al., *supra* note 48, at tbl. 1.

72. *Id.*

ing coordinator who only *may* be required to have mediation skills.<sup>73</sup> Texas has more specific requirements on who can practice as a parenting coordinator: eight hours of family violence training; 40 hours in dispute resolution techniques; 24 hours in family dynamics, child development, family and parenting coordination law; and parenting coordination styles and procedures, most of which can be waived by the parties in the appointment of the parenting coordinator.<sup>74</sup> These differences in parenting coordinator requirements track the differences in family law for their respective state.<sup>75</sup>

Standards for appeal and review of a parenting coordinator's decision also vary from jurisdiction to jurisdiction. The Parenting Coordinator Act in Oklahoma sets out the appointment and removal process of a parenting coordinator in its first section, stating that:

1. Except as otherwise provided by this subsection, the court shall reserve the right to remove the parenting coordinator in its own discretion.
2. The court may remove the parenting coordinator upon the request and agreement of both parties. Upon the motion of either party and good cause shown, the court may remove the parenting coordinator.<sup>76</sup>

Other jurisdictions employ this approach and require good cause to be shown to remove a parenting coordinator.<sup>77</sup> Until a decision is rendered regarding the disputed decision of the parenting coordinator, the parties typically must comply with the decision of the parenting coordinator in the meantime. Some states, like North Carolina, also allow for an expedited hearing for the presiding judge to determine the propriety of a parenting coordinator's decision.<sup>78</sup> The jurisdictions with statutes and court rules typically require a parenting coordinator to report back to the court every few months to review the parenting coordinator's decisions in light of the best interests of the children.<sup>79</sup> As more jurisdictions enact parenting coordination statutes and parenting coordination practices are studied further, certain family law advocacy groups may push for more uniformity in proper parenting coordination practices nationwide.<sup>80</sup>

Like any other ADR method, Parenting Coordination is not without its critics and supporters. Arguments from both sides are meritorious and strengthen the discussion surrounding Parenting Coordination. As such, they are more deeply explored in the following section.

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73. *Id.*

74. *Id.*

75. *Id.* at 630.

76. OKL. ST. ANN. tit. 43, § 120.3 (2014).

77. *Barnes v. Barnes*, 107 P.3d 560, 565 (Okla. 2005) (removing a parenting coordinator requires a party to show good cause in a motion).

78. N.C. GEN. STAT. ANN. § 50-92(b) (2014).

79. Parks et al., *supra* note 48, at tbl. 1 (containing tabular information regarding when a parenting coordinator may or must report to a Court to review decisions).

80. *Id.*



### III. CRITIQUES AND SUCCESSES OF PARENTING COORDINATION

#### A. *The Benefits of Parenting Coordination*

Parenting coordination may have multiple reasons for its success. In addition to assisting children,<sup>81</sup> studies show that parenting coordination can assist parents in fostering positive communication and co-parenting skills.<sup>82</sup> It can also assist courts in reducing filings and appearances, particularly over ancillary parenting issues.<sup>83</sup>

##### 1. *Positive outcomes for children*

High-conflict divorces are detrimental to the mental and emotional development of children.<sup>84</sup> Because of these effects, states maintain strong interest in controlling the various aspects of the divorce process<sup>85</sup> to ensure the best interests of the children caught up in the divorce are considered.<sup>86</sup> The impetus behind the practice of parenting coordination was to reduce this conflict in the hope it would lessen the burden divorce inflicts upon children.<sup>87</sup> Intense and frequent disputes between parents can have a significant impact on the development of a child.<sup>88</sup> Exposure to conflict might result in higher rates of depression, substance abuse, and/or a reduced ability to form constructive and positive relationships with others.<sup>89</sup> The primary goal of parenting coordination is to minimize these effects on children.<sup>90</sup>

Research suggests the adversarial nature of divorce litigation enables and exacerbates parental conflict.<sup>91</sup> Although more study on the direct effects of parenting coordination to the well being of children is still needed,<sup>92</sup> healthy management of interpersonal conflict will almost inevitably impact a child's emotional well being positively.<sup>93</sup> Parenting coordination techniques educate and assist par-

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81. Ho, Monaco & Rosen, *supra* note 4.

82. *Id.* at 101-02.

83. Wilma J. Henry, Linda Fieldstone & Kelly Bohac, *Parenting Coordination And Court Relitigation: A Case Study*, 47 FAM. CT. REV. 682 (2009).

84. *An Overview of the Literature on the Effects of Divorce on Children*, AM. PSYCHOL. ASS'N., <http://www.apa.org/about/gr/issues/cyf/divorce.aspx> (last visited Aug. 8, 2015).

85. *Barnes v. Barnes*, 107 P.3d 560, 564 (Okla. 2005) (citing *Att'y Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898 (1986)).

86. *Ford v. Ford*, 371 U.S. 187, 194 (1961) (holding that the best interests of children govern interstate custody); see also Janet M. Bowermaster, *Legal Presumptions and the Role of Mental Health Professionals in Child Custody Proceedings*, 40 DUQ. L. REV. 265 (2002).

87. Telephone Interview with Christine A. Coates, J.D., Professor at the University of Colorado School of Law (Oct. 14th, 2014).

88. John H. Grych, *Interparental Conflict As A Risk Factor For Child Maladjustment: Implications for the Development of Prevention Programs*, 43 FAM. CT. REV. 97 (2005); Tonya Inman, Patricia Carter & John P. Vincent, *High-Conflict Divorce: Legal and Psychological Challenges*, HOUS. LAW., Mar.-Apr. 2008, at 24.

89. Grych, *supra* note 88.

90. Telephone Interview with Christine A. Coates, *supra* note 87.

91. Montiel, *supra* note 7, at 395.

92. Grych, *supra* note 88, at 97-98.

93. *Id.* at 101.

ents in managing everyday interpersonal issues.<sup>94</sup> Parenting coordination will not eliminate conflict,<sup>95</sup> but it can reduce conflict between parents,<sup>96</sup> and when this happens, children will be the ultimate beneficiaries of parenting coordination.<sup>97</sup>

## 2. High-conflict couples

Parenting coordination also carries the potential to benefit high-conflict parents. Roughly 10% of parents have difficulty parenting after they divorce and obtain a court-ordered parenting plan.<sup>98</sup> Those 10% of high conflict cases make up a disproportionate amount of the custody issues that are re-litigated: around 90%.<sup>99</sup> When post-divorce disputes arise, parents want answers to those disputes in a timely manner.<sup>100</sup> Unlike a judge, a parenting coordinator is available to resolve a dispute outside of court in a swift manner.<sup>101</sup> Spending less time in court and less money on attorneys and court costs provides a financial advantage to parents utilizing parenting coordinators.<sup>102</sup>

Available case studies demonstrate in-court appearances are declining by parents who are using parenting coordinators.<sup>103</sup> One study indicates 25% of court filings decreased after the appointment of a parenting coordinator and a more recent study shows nearly a 75% reduction in child-related court filings and a 50% decrease in all motions after the appointment of the parenting coordinator.<sup>104</sup> The non-adversarial and child-focused<sup>105</sup> techniques implemented by parenting coordinators<sup>106</sup> can help parents develop strategies to more effectively manage co-parenting problems.<sup>107</sup>

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94. For example, in Colorado, parenting coordinators are defined as "a neutral third party who assists in the resolution of disputes between parties concerning parental responsibilities, including but not limited to implementation of the court-ordered parenting plan." COLO. REV. STAT. ANN. § 14-10-128.1 (2014). The parenting coordinator functions as a high-conflict case manager who is appointed to intervene, educate, assist in communications, and generally keep the parenting on track." Christine A. Coates, *A Brief Overview of Parenting Coordination*, COLO. LAW., Jul. 2009, at 61 (emphasis added).

95. Telephone Interview with Christine A. Coates, *supra* note 87.

96. See Henry, Fieldstone & Bohac, *supra* note 83 (finding a reduction of court filings in custody and divorce disputes after the appointment of a parenting coordinator).

97. "As is the case pre-divorce, children in low-conflict post-divorce families have fewer emotional and behavioral problems." *An Overview of the Literature on the Effects of Divorce on Children*, *supra* note 84.

98. Christine A. Coates, *Parenting Plan Coordinators: When You Need Professional Help to Make Joint Decisions*, FAM. ADVOC., Summer 2010, at 20, available at <http://www.beckfirm.com/pdf/CoatesArticle.pdf>.

99. Brief for the AFCC and AFCC-NJ as Amici Curiae Supporting Respondent Schofel, at 6, *Segal v. Lynch*, 48 A.3d 328 (N.J. 2012), available at <http://www.hanansaacs.com/Significant-Cases/Hanan-AFCC-NJ-AMICUS-BRIEF-11-01-11.pdf> [hereinafter AFCC Brief] (citing Beck, et al., *Parenting Coordinator Roles, Program Goals and Services Provided: Insights from the Pima County Arizona Program*, 5 J. CHILD CUSTODY 122-23 (2008)).

100. Montiel, *supra* note 7, at 369.

101. *Id.* at 399.

102. *Id.* at 372-73.

103. Henry, Fieldstone & Bohac, *supra* note 83, at 682.

104. *Id.*

105. AFCC Brief, *supra* note 99, at 4, 8.

106. Ho, Monaco & Rosen, *supra* note 4.

107. *Id.*

### 3. Benefits for family law attorneys and judges

A recent survey conducted in the Eleventh Judicial Circuit in Miami-Dade County, Florida revealed mostly positive feedback by judges, magistrates, and attorneys towards parenting coordination.<sup>108</sup> Ninety-four percent of judges in the survey indicated parenting coordination to be overall helpful—93% of attorneys also agreed.<sup>109</sup> Further, 71% of judges and 61% of attorneys noted conflict levels between parents had somewhat reduced.<sup>110</sup> The main reasons judges found parenting coordination helpful included reductions in parental conflict, assistance with time-sharing and scheduling, and an increase in parental joint decision-making.<sup>111</sup> Judges and attorneys both indicated with a statute in place they were more likely to appoint a parenting coordinator in their cases.<sup>112</sup>

Parenting coordination may also help to cut down a lot of unnecessary motions that are filed with already crowded judicial dockets.<sup>113</sup> High-conflict families can be difficult for attorneys and a heavy workload for courts.<sup>114</sup> Ancillary parenting issues such as minor changes in the school pick-up schedule or which parent will attend the parent-teacher meeting are perfect for parenting coordinators to handle.<sup>115</sup> These types of ancillary issues are better handled by an individual who is a repeat-player with the parties and who understands the parties' personal needs and desires. Precious judicial time can then become re-focused on issues incapable of this sort of delegation. Additionally, as court proceedings are neither efficient nor a cost-effective option for parents, judges would prefer not to have to supervise every minor interpersonal conflict that arises between divorced parents.<sup>116</sup> Parenting coordination therefore provides an efficient solution to minor conflicts that can crowd court dockets.

#### B. Risks of Parenting Coordination

One of the main arguments against parenting coordination is that it vests improper decision-making authority in the hands of the parenting coordinator.<sup>117</sup> Some states are clear about this objection and prohibit major decision-making by the parenting coordinator.<sup>118</sup> In other states, that is not the case. In Oklahoma, some decisions made by the parenting coordinator are “immediately effective” without court review.<sup>119</sup> In *Telek v. Bucher*, a father argued his court-mandated participation in parenting coordination was analogous to being ordered to partici-

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108. Linda Fieldstone et al., *Perspectives on Parenting Coordination: Views of Parenting Coordinators, Attorneys, and Judiciary Members*, 50 FAM. CT. REV. 441 (2012).

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. Sherrill W. Hayes, *More of a Street Cop Than a Detective: An Analysis of the Roles and Functions of Parenting Coordinators in North Carolina*, 48 FAM. CT. REV. 698, 699 (2010).

115. *Id.* at 708.

116. Ho, Monaco & Rosen, *supra* note 4.

117. Montiel, *supra* note 7, at 418.

118. Coates et al., *supra* note 37.

119. Montiel, *supra* note 7, at 425.

pate in binding arbitration.<sup>120</sup> In *Fultz v. Smith*, a parenting coordinator made a major decision regarding custody of the children that modified the court's custody from mother to father.<sup>121</sup> The court held that judges are not to be bound by parenting coordinator's decision.<sup>122</sup> Different jurisdictions interpret the issue of a parenting coordinator exceeding authority differently.<sup>123</sup>

Ideally, a parenting coordinator would not play the role of advocate, but would rather function as a third party neutral in order to assist parents with co-parenting problems.<sup>124</sup> However, the potential bias of a parenting coordinator remains a concern for parents.<sup>125</sup> High-conflict family dynamics can include one partner initiating most of the conflict, resulting in the parenting coordinator making decisions in favor of the more passive parent.<sup>126</sup> The opposite may also be true—a parenting coordinator may proactively seek to minimize parental conflict by favoring the conflict-prone parent for the sake of peace between the parties.<sup>127</sup>

"If clients are worried a parenting coordinator might become easily biased, then they are more likely to acquiesce to suggestions and give the appearance of cooperation, even if they do not really agree with the substance of the agreement."<sup>128</sup> The impartiality of the parenting coordinator is necessary for the trust of both parties.<sup>129</sup> Absent that trust, the goals of parenting coordination are undermined and its effects may be muted. In *Hastings v. Rigsbee*, a Florida District Court denied a motion to change a parenting coordinator when the mother claimed a strained relationship between herself and the parenting coordinator caused the parenting coordinator to "lose all of her objectivity and neutrality," allegedly resulting in the parenting coordinator being "openly hostile to Mrs. Hastings."<sup>130</sup> The appeals court reversed the decision, finding the district court had abused their discretion and the parenting coordinator was undermining the parental rights of Mrs. Hastings.<sup>131</sup>

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120. *Telek v. Bucher*, No. 2008-CA-002149-ME, 2010 WL 12353473, at \*4 (Ky. Ct. App. Apr. 2, 2010).

121. *Fultz v. Smith*, 97 P.3d 651, 652 (Okla. Civ. App. 2004).

122. *Id.* at 655.

123. *Hausladen v. Knoche*, 235 P.3d 399, 403 (Idaho 2010) (stating that a parenting coordinator has the authority to make recommendations regarding custody and parenting issues); *Bower v. Bournay-Bower*, 15 N.E.3d 745, 754 (Mass. 2014) (holding that a Judge lacked authority to appoint a parenting coordinator without parental consent); *Yates v. Yates*, 963 A.2d 535, 541 (Pa. Super. Ct. 2008) (stating that parenting coordinators could decide ancillary parenting issues and holding that appointment of a parenting coordinator was not an improper delegation of extrajudicial authority); *E.A.P. ex rel. V.C.I. v. J.A.I.*, 421 S.W.3d 460, 464 (Mo. Ct. App. 2013) (holding that a parenting coordinator could not make custody determinations and the appointment of a parenting coordinator was an improper delegation of extrajudicial authority).

124. *Guidelines for Parenting*, *supra* note 5 ("A parenting coordinator shall maintain impartiality in the process of parenting coordination, although a PC is not neutral regarding the outcome of particular decisions. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.").

125. *See Barsky*, *supra* note 3.

126. *Id.*

127. *Id.*

128. *Id.* at 13.

129. *See Mullendore v. Mullendore*, 288 P.3d 948, 956 (Okla. Civ. App. 2012) (wife claimed parenting coordinator spent an "inordinate amount of time" in ex-parte meetings with the father and challenged the parent coordinator's neutrality).

130. *Hastings v. Rigsbee*, 875 So. 2d 772, 774 (Fla. Dist. Ct. App. 2004).

131. *Id.* at 779.

Parenting Coordination is not a standardized practice among the states. Jurisdictions vary widely on what is expected of a parenting coordinator and who should qualify to be one despite the existence of the guidelines provided by the Association of Family and Conciliation Courts. Some states have statutes articulating the proper role of a parenting coordinator,<sup>132</sup> but others do not:<sup>133</sup> as a result there is confusion and debate on a national scale over what purpose parenting coordination serves and the scope of their authority. The authority of a parenting coordinator varies. It might include functioning as a mediator and assisting parents with ongoing disputes,<sup>134</sup> or it might mean working as a special master<sup>135</sup> with recommendations reviewable by the court.<sup>136</sup> It might also mean rendering binding decisions on matters within the scope of the parenting plan.<sup>137</sup> This lack of standardization in the parenting coordination role has made attorneys and judges uncomfortable with its implementation, particularly in jurisdictions where there is no governing statute or program to guide courts in appointing a parenting coordinator and overseeing the parenting coordination process.<sup>138</sup> Thus, legal professionals are rightfully concerned that minimal guidance over what the role of a parenting coordinator should be could lead to confusion and improper decision making. Part of this concern may be tied to the novelty of parenting coordination, and part of it to the different approaches jurisdictions employ when using parenting coordinators.

By its nature, parenting coordination requires a parenting coordinator to wear many professional hats.<sup>139</sup> Section IV.A of the AFCC guidelines for parenting coordination states that parenting coordinators cannot engage in a role of advocate, evaluator (for custody), therapist, or lawyer for any family member.<sup>140</sup> Since parenting coordinators can come from different professional disciplines,<sup>141</sup> they are subject to different disciplinary authorities that govern confidentiality, standards of care, record keeping, and other important aspects of professional responsi-

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132. See OKL. ST. ANN. tit. 43, § 120.3 (2014). See also *Dillbeck v. Dillbeck*, 245 P.3d 630 (Okla. Civ. App. 2010) (holding that the trial court improperly delegated authority to parenting coordinator outside of the statute).

133. *Butler v. Butler*, No. M2011-01341-COA-R3-CV, 2012 WL 4762105, at \*11 (Tenn. Ct. App. Oct. 5, 2012).

134. *In re Marriage of Dauwe*, 148 P.3d 282, 284-85 (Colo. App. 2006) (stating that a parenting coordinator serves as a “third party neutral . . . concerning parenting disputes”).

135. A special master is a court-appointed expert who assists judges in a quasi-judicial role to avoid frequent, continuing custody litigation. Janet Griffiths Peterson, *The Appointment of Special Masters in High Conflict Divorces*, 15 UTAH B.J. 16 (Aug./Sept. 2002).

136. See *In re Marriage of Rozzi*, 190 P.3d 815, 821 (Colo. App. 2008) (holding it was proper exercise of authority for parenting coordinator to make nonbinding recommendations to parties in a divorce).

137. *Silbowitz v. Silbowitz*, 88 A.D.3d 687, 688 (N.Y. App. Div. 2011) (holding parenting coordinator had decision-making authority within the scope of the parenting plan).

138. Telephone Interview with Christine A. Coates, *supra* note 87.

139. See *Guidelines for Parenting*, *supra* note 5, at 165 (stating that “[p]arenting coordination is a quasi-legal, mental health, alternative dispute resolution (ADR) process that combines assessment, education, case management, conflict management and sometimes decision-making functions”); see also Doris Truhlar, *Use of a Parenting Coordinator in Domestic Cases*, COLO. LAW., May 1998, at 53 (a parenting coordinator can be an attorney, psychiatrist, psychologist, licensed clinical social worker, other counselors, mediator, and/or other ADR professional).

140. *Guidelines for Parenting*, *supra* note 5, at 167-68.

141. Truhlar, *supra* note 139, at 53.

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bility.<sup>142</sup> This makes it more difficult to regulate parenting coordinators and create uniformity within the practice.<sup>143</sup>

### C. *Efficacy of Parenting Coordination*

Other than surveys asking parenting coordinators, attorneys, and judges what they think of parenting coordination's efficacy,<sup>144</sup> there is very little empirical data suggesting it is effective.<sup>145</sup> Anecdotal evidence and a limited body of research<sup>146</sup> calls into question whether the goals of parenting coordination are actually being met in high-conflict divorce cases. Parents' opinions regarding the efficacy of parenting coordination have not been empirically analyzed,<sup>147</sup> and there is no rigorous empirical research that confirms the direct connection between using a parenting coordinator and improving the lives of children in post-divorce families.<sup>148</sup> Without the empirical evidence to corroborate the efficacy of parenting coordination, skeptics question the purpose of implementing parenting coordination programs.<sup>149</sup> However, based on the aforementioned trends and policy arguments in favor of Parenting Coordination, there is a potential for greater judicial efficiency, increased parenting harmony, and better outcomes for children.

## IV. THE PENNSYLVANIA DECISION

The Pennsylvania decision to eliminate parenting coordination wholesale from its operative legal framework did not give proper weight to the benefits that parenting coordination could offer, while also arbitrarily eliminating parenting coordination when the problems could have been fixed by simply amending the then-existing legal framework. Regardless, the decision may serve as a warning and an example for other states facing similar challenges.

### A. *Parenting Coordination's Benefits Outweighs Its Risks*

In light of the potential benefits parenting coordination can provide and the progression of parenting coordination to more uniform practices,<sup>150</sup> the Pennsylvania Supreme Court's decision was a mistake. Not only did the decision pull the rug out from underneath parents who were using parenting coordinators at the

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142. Barsky, *supra* note 3, at 18.

143. *Id.* at 19.

144. See Ben Present, *Concern Over Judicial Authority Drove Parent Coordinator Elimination*, THE LEGAL INTELLIGENCER (May 7th, 2013) [http://www.obermayer.com/files/Ladov\\_Concern\\_Over\\_Judicial\\_Authority.pdf](http://www.obermayer.com/files/Ladov_Concern_Over_Judicial_Authority.pdf) (showing the opinion about parenting coordinators among the legal community).

145. Karl Kirkland & Matthew Sullivan, *Parenting Coordination (PC) Practice: A Survey of Experienced Professionals*, 46 FAM. CT. REV. 622, 635 (Oct. 2008).

146. *Id.*

147. *Id.*

148. Grych, *supra* note 88, at 98 (stating there is little empirical research confirming the efficacy of divorce education programs in reducing parental conflict or helping children).

149. Barsky, *supra* note 3, at 18.

150. Henry, Fieldstone & Bohac *supra* note 83.

time,<sup>151</sup> it also limited their dispute resolution avenues.<sup>152</sup> Furthermore, the Supreme Court of Pennsylvania issued little in the way of explanation for the change in the rules.<sup>153</sup>

Like any other ADR practice, parenting coordination is not for every parent nor will it work for every parent.<sup>154</sup> Concerns and criticisms about parenting coordination have been addressed by the AFCC in the Guidelines for parenting coordination,<sup>155</sup> and continue to be addressed by legislatures that enact detailed Parenting Coordinator statutes.<sup>156</sup> Parenting Coordination is an ADR practice that is child-focused,<sup>157</sup> assists parents in resolving parenting disputes, increases court efficiency, and potentially reduces costs for parties.<sup>158</sup> Though the potential risks associated with parenting coordination are of real concern,<sup>159</sup> dismissing a practice that is replete with potential benefits is a disservice to high-conflict families that can use assistance managing their co-parenting problems.

### B. *The Decision Arbitrarily Singled Out Parenting Coordination*

If there was something the Pennsylvania Supreme Court found objectionable about Parenting Coordination, changing the practice in a desirable way, such as to allow for more oversight over the process, would have been a better choice. Parenting Coordinators are appointed through statute or court rule so they could have made any additional requirements for a parenting coordinator that they thought might be necessary to ensure fairness towards all parties involved.

If the elimination of parenting coordinators was somehow connected to the Luzerne County Kids for Cash scandal,<sup>160</sup> there seems to be very little reason behind the decision. The scandal had nothing to do with parenting coordination.<sup>161</sup> Judges who accept bribes are subject to criminal liability<sup>162</sup> and professional discipline. Removing a potentially helpful ADR process does little, if anything, to address the problem of judicial indiscretion. If Pennsylvania's concern about parenting coordination was about the delegation of judicial authority to a non-judicial entity, then why didn't other non-judicial delegates like special masters, arbitrators, and mediators get eliminated as well? Those roles remain intact in Pennsylvania with no indication of changing.<sup>163</sup>

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151. Telephone Interview with Arnold Shienvold, Former Dir., Assoc. of Family and Conciliation Courts, Parenting Coordinator, Rigler, Shienvold, & Associates (Oct. 14, 2014).

152. *Id.*

153. *Id.*

154. Telephone Interview with Christine A. Coates, *supra* note 87.

155. *Guidelines for Parenting*, *supra* note 5.

156. Barsky, *supra* note 3.

157. Deborah Smith Bailey, *A Niche that Puts Children First*, AM. PSYCHOL. ASS'N, Jan. 2005, at 46, available at <http://www.apa.org/monitor/jan05/niche.aspx>.

158. Barsky, *supra* note 3.

159. See discussion *supra* Part III.B.

160. Menzano, *supra* note 22.

161. *Id.*

162. Walter Pavlo, *Pennsylvania Judge Gets 'Life Sentence' for Prison Kickback Scheme*, FORBES (Aug. 8, 2011) <http://www.forbes.com/sites/walterpavlo/2011/08/12/pennsylvania-judge-gets-life-sentence-for-prison-kickback-scheme/>.

163. PA. COLUMBIA MONTOUR CTY. CIV. LR 7.02 (court rule authorizing the appointment of a special master); 23 PA. CONS. STAT. § 3901 (2014) (statute authorizing the use of mediation in divorce); 42 PA. CONS. STAT. § 7303 (2014) (statute authorizing the use of arbitration in civil action).

*C. Suggestions and Predictions for Other Jurisdictions Moving Forward*

States will continue to pass legislation governing the parenting coordination process, and it is a shame that Pennsylvania parents have lost access to an ADR process that has been shown to be helpful for resolving parenting disputes. As long as divorced parents follow their parenting plans, they can of course stipulate to their own mediation-arbitration process if they choose under the arbitration act to do so—but given the nature of high-conflict,<sup>164</sup> it is unlikely the parties will come to that decision on their own.<sup>165</sup> However, one thing is clear from Pennsylvania's decision—it is the children who will bear the harmful force of the arbitrary decision to remove parent coordinating as an option for families.

The adversarial system falls short of being able to meet the needs of every high-conflict family.<sup>166</sup> Appearances in court where high-conflict parents are presented in an "us vs. them" dynamic can cause more problems than are solved because such a dynamic reinforces differences between parents that already exist.<sup>167</sup> Parenting coordinators, on the other hand, are taught to manage those differences and teach the parties to cooperate for the sake of the children that are in the middle of the parental conflict.<sup>168</sup>

As the legal atmosphere around parenting coordinating continues to develop, legislatures and courts would be wise to carefully adhere to the AFCC guidelines and craft similar in-depth rules. Courts utilizing parenting coordination without the guidance of a rule or statute should be conscious of the need for clarity in a parenting plan and should articulate in court the scope of the Parenting Coordinator's specific authority and duties in order to minimize the potential for bad decision-making on the part of the parenting coordinator.<sup>169</sup> A more comprehensive review of parenting coordinator decisions would also address concerns about fairness and the improper delegation of judicial authority.<sup>170</sup>

## V. CONCLUSION

Simply put, the Pennsylvania Supreme Court threw the baby out with the bathwater when the Court decided to eliminate parenting coordination. Pennsylvania will probably be in the minority of states to not allow parenting coordination as other states push for its adoption and as ADR continues to become a more popular route for individuals whose needs are not best served by the adversarial system. Parenting coordination was designed to help kids and thus it is not surprising that kids are often placed in the middle of parental conflict. High-conflict parents also regularly use their children as the communicating tool between themselves when they cannot get along or agree,<sup>171</sup> and in the end, children are the ones who

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164. Downs, *supra* note 37.

165. *Id.*

166. *See generally*, HOWARD H. IRVING, CHILDREN COME FIRST: MEDIATION, NOT LITIGATION WHEN MARRIAGE ENDS (2011).

167. *Id.*

168. Telephone Interview with Christine A. Coates, *supra* note 87.

169. *Id.*

170. *Id.*

171. *Id.*



suffer because of those behaviors.<sup>172</sup> The welfare of children is a long-established governmental interest.<sup>173</sup> If Parenting Coordination can serve that interest, it does not deserve to be abolished when it sometimes fails. The flaws should be worked out to increase its effectiveness.

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172. *Id.*

173. See generally, *Determining the Best Interests of the Child*, *Child Welfare Information Gateway*, CHILD WELFARE INFORMATION GATEWAY (Nov. 2012), [https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/best\\_interest.pdf](https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf).