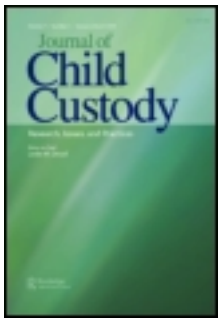

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# Risk Management and Aspirational Ethics for Parenting Coordinators

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# Risk Management and Aspirational Ethics for Parenting Coordinators

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**ABSTRACT.** This paper reviews areas of risk management and aspirational ethics as related to the relatively new practice of court-appointed parenting coordinators. Risk management and aspirational ethics are defined and related to this area of post-divorce professional activity. Incidence data concerning licensure board complaints and civil lawsuits are reviewed. Guidelines which incorporate risk management and aspirational ethics regarding parenting coordinating are reviewed. *[Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Web site: <http://www.HaworthPress.com> © 2006 by The Haworth Press, Inc. All rights reserved.]*

**KEYWORDS.** Parenting coordinators, risk management, parenting coordinator ethics, guidelines

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> The past is never dead. It's not even in the past.
> Attorney Gavin Stevens to Temple Drake in William Faulkner's *Requiem for a Nun, Act I, Scene III, (Faulkner, 1951).*

## *THE PARENTING COORDINATOR MODEL*

The "past" can loom large as the major barrier to effective communication and healthy adjustment after a difficult divorce. Clearly for some couples who remain locked in high conflict relationships, the past won't stay in the past. High levels of conflict typically result in low levels of parental cooperation and effective communication. The coordination of post-divorce communication and related management of conflict are among the most important factors involved in the work of domestic courts in trying to assure that the best interests of children are met through the judicial process.

Repeated visits to the courtroom flood the domestic relations docket and cause great frustration for all the parties involved. The divorced parties experience increased alienation and even more depletion of financial resources. This expensive "merry-go-round" clogs the system, but its greatest impact is on children who are caught in the middle of a grueling siege that can often last for decades. Firestone and Weinstein (2004) observed that the legal system by its very adversarial nature is ill suited to deal with most post-divorce problems, in which "family relationships have become legalized in such a way that the system loses sight of the human problems in context and focuses only on addressing answers to legal questions" (p. 203).

The purpose of this paper is to review the current state of development of model practice for forensic mental health professionals (FMHPs) known as parenting coordinators. The field has developed sufficiently for most leading researchers to agree that there are standards of practice for PCs (Gould, 2004; Kirkpatrick, 2004). This review seeks to link standards of practice to risk management principles and the spectrum of ethical choices.

We propose that FMHPs have just as much to offer domestic courts of law post-divorce as pre-divorce in the form of CCEs.

In our practice experience, effective pre-divorce FMHP activity, typically in the form of child custody evaluations (CCEs), leads courts to consider use of FMHPs in post-divorce work as well, usually in the form of PC. Courts that benefit from CCEs in making custodial decisions naturally turn back to the same professional field for assistance with

post-divorce issues, such as disputes surrounding parenting plans and access issues. The ethical standards of FMHPs necessitate that we also inform courts and family lawyers that different FMHPs should occupy these different pre- and post-divorce roles (Kirkpatrick, 2004).

Maccoby and Mnookin (1992) observed some 13 years ago that 10 to 25% of divorced couples remain mired down in destructive, pathological levels of conflict long after divorce. The typical outcome is that the high conflict group goes on to take up far too large a percentage of available time for courts, domestic lawyers, and mental health professionals. One of our local domestic relations judges laments that these high conflict cases represent only 10% of his docket, but take up 90% of his time (Judge John Capell, personal communication, September 12, 2004).

In response to this problem, the post-divorce role of parenting coordinator (PC) has emerged and is rapidly spreading across legal jurisdictions in the United States and Canada (Coates, Deutsch, Starnes, Sullivan, & Sydlik, 2004; Stahl, 1999; Sullivan, 2004). Firestone and Weinstein (2004) succinctly observed that the current domestic law system, with its emphasis on adversarial posturing and legal rights of the parents, is not the appropriate forum to resolve the problems of divorcing or divorced families.

These researchers go on to observe that this current model, without the assistance of PC, may be more harmful than beneficial to children and even families in the long run. The types of problems that families encounter post-divorce are difficult to fit into the legal funnel of the adversarial process.

AFCC President-Elect (2005-2006) Hon. Judge Hugh Starnes of Ft. Myers, Florida is a very strong proponent of PC (AFCC, 2004). Judge Starnes has proposed four challenges for courts considering PC (AFCC, 2004). These challenges include: (1) identifying the proper cases for PC referral; (2) appropriate education and orientation to the PC process by the court, with a very clear agenda; (3) using the court order to define the role, maximize the power of the PC, and educate the parents about how to utilize PC services; and, (4) provide for inclusion a manner of monitoring by the court and the consequences of non-compliance or a lack of cooperation with the PC. Judge Starnes observed that the PC model needs to be sold to divorcing parents (and attorneys) by the judge who should note that the model is less expensive, faster, and more satisfactory to all parties.

## *EARLY LEADERS IN PARENTING COORDINATION*

Carla Garrity and Mitchell Barris (1994) of Denver, Colorado were among the early leaders in conceptualizing and implementing this new professional role. These psychologists formed a study group of high conflict families in the Denver area. From their work, an early PC model emerged based on the dynamics of high conflict families and related treatment strategies. The Garrity Barris (1994) model used the term "parenting coordination" and described role functions of the PC, including utilizing professionals with backgrounds in family law, conflict resolution, mediation, family therapy, and child development. The PC is then in a better position to assist parties in developing parenting plans, monitoring progress and compliance to the plan, and to resolve conflicts in a timely manner. When used in this manner, families avoid the cost and anguish of re-litigating issues that are best addressed with the PC in an environment that is far more likely to promote positive communication and problem solving.

Janet Johnston and Vivienne Roseby (1997) have described the parenting coordinator model as "a new kind of professional role" (p. 243). These research-practitioners noted that the model is most useful in situations involving severe personality disorders who are constant litigators, where a parent has a mental illness, where parents lack the skills to make successful decisions, and in potentially abusive situations where there are ongoing, but unsubstantiated allegations of abuse. These early explorers of PC contributed enormously to the concept of a neutral court-appointed, trained practitioner who is authorized by the court to assist with implementation of parenting plans and to provide solutions to confliction situations before they have time to fester into levels of permanent damage.

Matthew Sullivan (2004) has also been a driving force in the development of a PC model for practice. Sullivan defines the role as a legal/psychological hybrid, "demanding knowledge and skill in legal domains (legal procedure, relevant case law, etc.), psychological domains (child development, family systems, etc.), and dispute resolution (mediation and settlement processes)" (p. 576). Sullivan also observed that because of this hybrid role, the work of PCs is reviewed by multiple regulatory bodies including, the court of original jurisdiction, the appellate courts, the Judicial Code of Ethics, and the practitioner's own licensure board, and state and national associations' ethics committees. In addition, there is always the path of civil litigation against the PC.

Sullivan (2004) observed that multiple professional conduct expectations (the legal/psychological hybrid role) exacerbate the risk for review by multiple standards and agencies. In keeping with the essence of accountability as the hallmark of forensic services, as described by Greenberg et al. (2004), we should welcome extra scrutiny as a reminder of the need for awareness of the rights of litigants and the responsible use of professional power by PCs.

## *BASIS OF THE PC MODEL*

Cleary there are many influences on the current PC model of practice. These various factors include: (1) the work of the AFCC Task Force on Parenting Coordination and Special Masters which resulted in the publication of "Parenting Coordination Implementation Issues" (AFCC, 2003); (2) statutory law–some states (Idaho, Oklahoma, and Oregon) have passed laws creating legal parameters for implementation of the PC role; (3) information borrowed from closely related guidelines such as APA's guidelines with regard to conducting custody and access (APA, 1994) and AFCC's Model Guidelines for Child Custody Evaluations (AFCC, 1995); (4) publications in peer-reviewed journals such as *Journal of Child Custody, Professional Psychology: Research and Practice*, and *Family Court Review;* (5) anecdotal reports from workshops and symposia of professional organizations such as AFCC; (6) practice guidelines suggested by ethical codes of respective professional associations; and (7) case law that results from personal injury lawsuits against PC practitioners.

As the PC model has evolved, the practice prototype involves court-appointment in post-divorce cases where the PC has no prior involvement. The prototype also frequently involves establishment of a fee for service arrangement that may involve an initial reasonable retainer followed by a standard hourly charge. Effective practice also involves spending a fair amount of time in the beginning by educating the participants. An equal amount of time also typically involves discussing the ethics and parameters of the PC role.

Various types of issues may arise in PC practice. A common issue is the development of feelings of PC bias on the part of one or more participants. Other issues can revolve around ex parte communications with attorneys or the Court. Poor PC record keeping could also be a valid area of complaint. In general, the PC environment is so filled with potential ethical issues that the PC should assume that his/her work will

be subject to review by various parties, e.g., the Court, relevant licensure boards, peer reviewers.

## *ETHICAL THEORY AND PRACTICE*

In the evolution of a new professional role, it is imperative that theoretical ethics are tied to and can lead to the implementation of ideas into specific practices. First and foremost, is concern for consumers of PC services, but it are also vitally important in the world of risk management for practitioners. Ogloff and Olley (1998) observed that "at the most basic level both the law and ethics share two fundamental goals: the regulation of behavior and the protection of society" (p. 221). Ogloff and Olley delineated five areas that influence the behavior of psychologists: (1) causes of action found in general criminal and civil law; (2) peer review; (3) state and provincial licensing boards; (4) civil litigation of malpractice complaints; and (5) statutes and governmental regulations.

Ogloff and Olley (1998) further observed that ethical and legal standards influence one another and evolve gradually over time to become more alike. Kirkland, Kirkland, and Reaves (2004) proposed that disciplinary data from state licensure boards also should be counted in the equation of influence. Kirkland et al. (2004) stated, "What psychologists do wrong, in combination with how they are disciplined, does have an impact on the law and ethics. The knowledge of specific penalties with disciplinary data attached to particular practitioners may make ethical principles and codes of conduct even more memorable than abstract discussions of possible violations" (p. 181).

Kirkpatrick (2004) proposed that the field of child custody evaluation (CCE) has evolved past guidelines to the point of establishment of minimum standards for practice. Kirkpatrick uses the metaphor of "floor to ceiling" to differentiate between minimum requirements and maximum functioning. We propose that the closely related field of PC can be guided by similar standards rather than minimum "floor level" guidelines. We also suggest that the continuum of mandatory ethics to aspirational ethics, as proposed by Newman, Gray, and Fuqua (1996), is a useful model by which to explore risk management and aspirational ethics.

Aspirational ethics is the approach to professional practice that recognizes that the standards of conduct in a given role function should begin at the "floor" and aspire to seek the "ceiling" (Kirkpatrick, 2004). This approach focuses on achieving maximal moral and ethical outcomes

by promoting the development of character traits such as integrity and social responsibility (Newman, Gray, & Fuqua, 1996).

Mandatory ethics, on the other hand, focus on minimal requirements and behavioral rules, e.g., the "floor" rather than the "ceiling." Aspirational ethics, guided by virtue and integrity, are internally based and tend to be proactive. Mandatory ethics, guided by rules, tend to be reactive. Newman et al. (1996) observe that ethical dilemmas should be approached from both perspectives, "What shall I do?" (mandatory ethics) and "Whom shall I be?" (aspirational ethics).

To be meaningful, ethical standards need to be linked to specific practices that are reasonably easy to implement in the course of day-to-day forensic work. Kirkland, Kirkland, and Reaves (2004) proposed that specific knowledge of disciplinary data concerning professional behavior of FMHPs has a direct influence on the law and ethics. Ogloff and Olley (1998) noted, "As cases affecting psychologists unfold at the board level, the ethics codes are modified accordingly" and further, "When courts consider the propriety of a psychologist's conduct, the law sometimes incorporates the values and standards of the profession in setting the parameters of appropriate conduct" (p.222). Disciplinary data can be used to increase knowledge about and compliance with standards (Kirkland, Kirkland, & Reaves, 2004).

Unfortunately, there is a greater need for risk management in this area of professional functioning. Perhaps the greatest leader we have to look to in this area is Dr. David Martindale. Dr. Martindale practiced in the domestic arena in the trenches of New York City for several decades. He now serves as an expert consultant to FMHPs and attorneys in the pre- and post-divorce arena. From this vantage point, he has provided much practical wisdom and specific suggestions in the form of AFCC risk management workshops (Martindale, 2004).

Risk management refers to an approach to professional practice that seeks to lower the likelihood of exposure for practitioners to licensure board complaints and civil actions. This is accomplished by promoting adherence to maximal standards of practice (the ceiling) rather than mere observation of minimal guidelines (the floor) (Kirkpatrick, 2004; Kirkland, Kirkland, & Reaves, 2004; Martindale, 2004). Through these means, practitioners are encouraged to combine mandatory and aspirational ethics in a manner that ultimately lowers the risk of exposure to board complaints.

Several researchers have conducted national-scale surveys designed to assess the frequency of licensure board complaints and civil lawsuits against practitioners who practice in the domestic arena (Bow &

Quinnell, 2001; Kirkland & Kirkland, 2001). Kirkland and Kirkland (2001) found that psychologists who conduct child custody evaluations (CCEs) are likely to encounter a licensure board complaint, but very unlikely to receive a formal finding of fault or a sanction. There was only a 1% occurrence rate for actual findings of probable cause for discipline in their large-scale sample that included 34 licensure boards in the United States and Canada.

CCEs involve intense studies of divorcing families for a discrete and defined period of time. Several studies have determined that the average amount of time spent by practitioners conducting CCEs is between 24 and 26 hours (Ackerman & Ackerman, 1997; Bow & Quinnell, 2001). PC, on the other hand, is not time-limited, may last for years, and involves working with parents and children post-divorce in venues that are much more interactive and potentially more confrontational than conducting CCEs. In high conflict families, the PC could even be involved with a family until the children grow up, leave home, and truly become emancipated. One seasoned circuit judge in our circuit frequently opines, "The only cure for this family is that eventually these children are going to grow up and leave this mess" (Personal Communication, Honorable Judge John Capell, September 12, 2004).

Due to the protracted nature of the PC role, it is suggested that PC actually involves far greater risk for licensure board complaints and civil lawsuits than the role of CCE. Thus, the need for risk management is even greater for the PC than the CCE. The AFCC Task Force on Parenting Coordination (2003) recommends time limits, such as two years, on renewable terms of appointment for PCs. Even at two years, it is patently obvious that the PC role is more interactive, confrontational, and enduring than the CCE role. In addition, Martindale (2004) stresses the need for extensive memorandums of understanding between CCEs and divorcing parties. This practice is even more important for PCs.

## *A ROSE BY ANY OTHER NAME DOES NOT SMELL AS SWEET*

While the function of PCs is similar across jurisdictions, the titles used in various states have almost been one for each different jurisdiction. For example, the following names have been used in different states: special master in California, med-arbiter in Colorado, wise person in New Mexico, custody communicator in Hawaii, family court advisor in Arizona, resolution coordinator in Oklahoma, and parenting referee in Oregon (AFCC, 2003). In addition to being an interesting excursion in

variations on nomenclature, the issue of what to call, or what *not* to call the role, is a vitally important topic for risk management discussions.

AFCC (2003) recommends universal use of the term "Parenting Coordinator (PC)." Regardless of the term, in the final analysis it is essential that the role be definitively distinguished from the role of a mediator (Beck & Sales, 2001; Mosten, 1997). Inappropriate use of titles in this instance could easily become the reason for a licensure board complaint or a civil action. Practitioners should refuse to accept court appointment unless they are specifically named by name in the court order as a PC and not as a mediator. See Table 1 for a comparison of the role of mediators with that of CCEs and PCs.

A landmark case, F. Politi vs. J. Tyler, PhD, in Vermont, boldly underscores the importance of the FMHP being court-appointed and named by name as a PC. In 1993, Dr. Tyler accepted involvement in a

TABLE 1. A Comparison of Professional Roles

| Encounter Variables | Mediator | Parenting Coordinator | Child Custody Evaluator |
|---|---|---|---|
| **Type of Encounter** | Single Encounter-FMHP seeks win/win solutions from the point of view of both sides | Ongoing Relationship-often lasting for years-may be reviewed by court | Single encounter or series of appointments for one evaluation |
| **Goal of Encounter** | Goal = to help reach parental decisions | Goal = to facilitate or impose parenting decisions post-divorce | Goal = to produce an objective pre-divorce report |
| **Nature of Proceedings** | Proceedings are confidential | FMHP reports back to court as feedback for parents on an ongoing basis | FMHP produces a report to assist court with decisions about custody/access |
| **Role Through Court Involvement** | Court-appointed | Court-appointed | Court-appointed |
| **Risk of Legal Problems for FMHP** | Lowest risk for board complaints and lawsuits | Highest risk due to nature of task and length of relationship | High risk for board complaints and lawsuits |
| **Existence of Formal Guidelines** | Guidelines exist | Guidelines exist | Guidelines exist |
| **Likelihood of Difficult Communication** | Low likelihood of confrontation | Highest rate of confrontational communication | Mid-range likelihood of confrontation |

child custody evaluation case in which she was not court-appointed. Dr. Tyler entered into an arrangement with the parties and used her own contract. At the same time there was a court order calling for a "forensic evaluation" without specifying a specific FMHP. When Dr. Tyler was later sued by one of the (disgruntled) parties, this omission became painfully apparent. The court of jurisdiction over the civil suit against her ruled that she did *not* have any form of judicial immunity because she was not court-appointed *by specific name*. Fortunately for Dr. Tyler, the court did rule that the statute of limitations had run, thereby barring the plaintiff's claim for intentional infliction of emotional distress. One dissenting justice pointed out that it was apparent that the entire lawsuit could have been avoided by simply including Dr. Tyler's name in the court order.

## *DEALING WITH BOARD COMPLAINTS*

Dealing with board complaints is a harrowing experience for all practitioners. Kirkland and Kirkland (2001) described the experience as comparable to having one's license in "administrative purgatory." The available data suggest that practicing in this area is highly likely to result in a board complaint or a lawsuit at sometime (Bow & Quinnell, 2001; Kirkland & Kirkland, 2001). Licensure boards have to treat patently frivolous complaints with the same procedure as obvious fault complaints in order to insure due process protections to all consumers.

Kirkland and Kirkland's (2001) survey of 34 state and provincial psychology licensing boards revealed growing frustration on the part of licensure boards. The survey revealed that most boards were experiencing huge increases in the number of complaints in the CCE category. Many boards have made the observation that the original court of jurisdiction is the proper venue to hear grievances about CCEs prior to taking complaints to licensure boards or courts in civil actions (Kirkland & Kirkland, 2001).

Working in the domestic arena requires the development of "thick skin" in practitioners in response to criticism as well as formal complaints. Kirkpatrick (2004) has observed that FMHPs should expect to be held to certain minimal standards in board complaints and civil lawsuits concerning CCEs due to the fact that the field has evolved to the point that FMHPs should be expected to abide by minimum guidelines and even beyond. It appears that the PC field of knowledge is evolving in the same direction.

## PSYCHOLOGICAL VERSUS LEGAL ISSUES

Firestone and Weinstein (2004) elegantly point out some of the shortcomings of the adversarial nature of the legal system when dealing with the best interests of children in divorce. The adversarial process tends to reduce and funnel complex psychological, familial, and social issues into narrowly defined positions that do not help dysfunctional post-divorce families to function better. As Firestone and Weinstein (2004) state, "The focus on the rights of the parents in custody and parenting disputes often occurs without a discussion of the responsibility adults owe to children" (p. 204). In short, on too many occasions legal "rights" trump "best interests" and more commonsense solutions to complex family problems. In addition, any experienced PC can easily attest to experiences where zealous advocacy by attorneys for an individual side in a post-divorce battle resulted in greater alienation and poorer communication between the parties.

By virtue of being court-appointed, PCs are by definition, removed from the process of adversarial posturing. In addition, PCs are the only participants in the post-divorce arena that have specialized knowledge of the psychological effects of divorce and the developmental stages that growing children must face in the course of normal growth and development. The mental health and psychological knowledge background aspect that PCs bring to the table are unique in terms of professional knowledge and extremely valuable features of this post-divorce service to families.

PCs are in the unique position of pointing out to courts, attorneys, and families that the majority of the issues that arise post-divorce are psychological issues rather than legal in nature. Further, due to the nature of the problems that arise post-divorce, the legal system is ill equipped to solve these issues. PC assessment and intervention, with the backing of the court, is the better path to solutions.

## ROLE COMPARTMENTALIZATION

Several authors have commented on the extremely challenging and difficult nature of the PC role for practitioners (Coates et al., 2004; Lee, 1995; Sullivan, 2004; Boyan & Termini, 2005). While this is undoubtedly true, we should also remain cognizant of the difficult nature of the role for the participants. After the lengthy conflict and cost of a divorce, the challenge of being "coordinated" by a PC can be a daunting task, at

best. What is asked of parents is a difficult, if not unhealthy, degree of compartmentalization.

We ask parties who are often bitter enemies, worn out emotionally, financially drained, angry, and hurt to set aside those feelings and work with yet another domestic law specialist and incur even more expense. The participants' task is to separate and compartmentalize their anger and hurt and keep those negative emotions from spilling over into efforts to co-parent in a positive manner. This is challenging for the majority of couples.

The greatest degree of compartmentalization is found in Ben Garber's Directed Co-Parenting Intervention (DCI) (Garber, 2004). Garber (2004) recognizes DCI as a sixth level alternative in post-divorce services, preceded by (1) divorce educational programs; (2) individual psychotherapy; (3) conjoint couples therapy; (4) mediation; and (5) parenting coordination. DCI recognizes from the outset that some parents are so intractably locked in conflict that they must take the path of parallel parenting rather than continue to try and resolve their differences. In DCI there is no attempt to resolve disputes. The DCI facilitator continually brings the focus of attention back on establishing as much consistency between the two environments as possible. In this sense, the focus is entirely on the needs of the children.

Garber (2004) describes parallel parenting as the path to "disengagement." Garber describes disengagement as an essential development for successful negotiation of the restructuring of family relationships in situations where there is so much hostility that the parents cannot or will not communicate.

The PC field appears to be approaching the level of development seen in CCEs. As a result, we suggest that similar reasoning follow the same line of development seen in the CCE world concerning standards of practice as suggested by Kirkpatrick (2004). Kirkpatrick (2004) presents sound historical review of the level of maturity now found in the CCE world. With the publication of the AFCC's 2003 "Parenting Coordination: Implementation Issues," PC practice begins to assume a similar status with regard to a basic set of practice standards.

Clearly, PCs can make co-parenting easier by employing positive communication skills, by practicing aspirational or "ceiling" level ethics, and by developing protocols that deal with all parties in fair, consistent, and objective manners. David Martindale (2004) stresses the need to observe the dictum, "forewarned is forewarned" as an approach to risk management in conducting CCEs. Specifically, Martindale stresses the need to spend great deal of time and effort in

the process of orienting and educating the participants prior to beginning a CCE. This process involves education about the ethics of standardized CCEs and covering information contained in several memorandums of understanding.

These same warnings, admonitions, and procedures are even truer for the process of PC due to the intensity and length of exposure across time in PC. The PC is presented with multiple opportunities to model and teach more effective means of communication in post-divorce families through modeling and direct instruction. For some couples who have processed much of the emotion that is often initially seen in divorce, PC offers a solid framework in which to function with definitive standards of care.

## *A DOZEN STANDARDS FOR PCS*

The standards below are tied to specific references that can be used to anchor each guideline. See Table 2 for a summary of these standards.

(1) Parenting Coordination should only occur when the PC has been court-appointed. The PC should be specifically named in the court order by name and clearly identified as "Parenting Coordinator" (APA, 1994; AFCC, 1995). A pattern PC order is provided as Appendix A (See Appendix A).

(2) If your state does not have a PC statute, work with your state bar association's family law division to explore the possibility of introducing and passing such legislation based on AFCC guidelines (AFCC, 2003). This is also an opportunity to forge a strong consultative relationship with the domestic bar leadership at the local and state level.

(3) PCs should accept court appointment only in cases where there is no prior therapeutic contact. A possible exception to this is seen in some parts of the country where a custody evaluation folds over into a settled agreement that includes appointment of the evaluator as PC, where there are no objections by any parties (AFCC, 2003; Strochak, 2000).

(4) Develop a standardized manner for dealing with inquiries about PC services. Train a specific office staffer to screen inquiry calls and to collect intake information. From the initial phone inquiry, there must be specific and standardized ways of handling questions and providing information. Martindale (2004) suggests that this phase of interaction in CCEs should specifically NOT be handled by the CCE. The same reasoning and recommendation applies in PC. The initial contact can set the stage for the entire ensuing relationship (Martindale, 2004).

TABLE 2. A Summary of Guidelines for PC

**PC Role Guidelines**

1. Accept only court-appointed PC Cases.
2. Make sure PC named by name as "Parental Coordinator."
3. Work with State Bar toward PC statute.
4. Work only with cases where there is no prior involvement.
5. Develop protocol for having standardized procedures for having office manager handle PC cases from initial phone call to case end.
6. Develop comprehensive statements of understanding to cover releases of information, role parameters, fee arrangements, grievance policies, terms of service, role parameters, and role limits per Martindale (2004).
7. Work with local Family Court to develop standard PC order based on AFCC 2003 guidelines.
8. PC appointing order should include terms of appointment, quasi-judicial immunity, fee arrangements, ex parte communication, and grievance procedures. Grievances typically must be reviewed first by appointing Court prior to becoming licensure board complaints or civil actions.
9. Identify cause for termination of PC services or lack thereof, so as to insure that PC has adequate power to perform court-ordered roles and functions.
10. Develop a strong backbone and thick skin as well as a healthy balance between assertiveness and professional humility.

(5) Develop standardized forms and memorandums of understanding for purposes of informing the parties and providing risk management for the PC. Martindale (2004) has developed extensive forms for use in CCEs that can be easily adapted for PC use. Martindale (2004) generously offers use of these forms in practice which cover record keeping, disclosure of previous contacts, duty of care variables, confidentiality policies, issues surrounding fees, limitations of the services offered, services not provided, use of collateral contacts, out-of-session contacts, and dealing with refusals to attend or continue, quasi-judicial immunity for the PC, and an agreement as to how to handle grievances

which typically involve appealing to the court-appointing authority (Martindale, 2004).

(6) Develop strong and open relationships with the domestic bench in your area so that they clearly come to know with assurance that your practice is characterized by aspirational ethics, solid principles of risk management, and other standardized ways of dealing with PC management (AFCC, 1995; Martindale, 2004). Copy the court and all attorneys on all correspondence.

(7) Realize that the saying "familiarity breeds contempt" can find full life in PC cases because of the task at hand and the length of involvement for the parties with the practitioner. For this reason, the order should specify periodic reviews by the court, typically at two-year intervals (AFCC, 2004). Also the order should specify the proper path for removal of the PC upon show for good cause, which can be requested by motion of one or both parties (AFCC, 2004).

(8) Court orders should specify arrangements and terms for payment for PC services, usually a 50-50 split between the parties. This should include issues of a possible retainer and the billable hourly rate. The order can further specify that failure to pay can result in a finding of contempt and specify that such failure could result in a reason for termination of services by the PC (AFCC, 2004).

(9) Recognize that some parents are so angry, bitter, and locked in intractable conflict that PC is not possible. Some of these participants are so pathologically addicted to conflict that PC will never work under any circumstances. Garber (2004) observed that this is a cue for attempting DCI's parallel parenting. The PC always retains the right to make the determination after due diligence. In cases of severe personality disorder, we have to acknowledge that there is no solution except a very specific and rigid court order.

(10) Court orders should specify rules and regulations regarding ex prate communication between the PC and the court, parties, and attorneys. Should the order not specify such parameters, the PC's memorandum of understanding should specify the rules in this area.

Some states recognize that the PC role is different than that of a guardian ad litem, where ex parte contacts are never allowed with the court without the presence of the other parties' attorneys (AFCC, 2003; Martindale, 2004).

(11) In most instances, PCs have quasi-judicial immunity. The United States Supreme Court has adopted a position of quasi-judicial immunity for those persons performing adjudicatory functions (*Butz v. Economou, 438 U.S. 478 1977).* The reasoning behind the immunity is that the

individuals performing the judicial functions must have the freedom and confidence to conduct those actions without worrying about an unhappy, manipulative party bringing a cause of action against them for those same actions.

(12) PCs have to develop firm and assertive communication skills. They have to be diplomatic in their dealings with parties who, at times, can be very challenging to handle.

We have experienced situations in which highly unscrupulous lawyers have filed a lawsuit or a formal grievance with the court or state licensure board for the sole purpose of having a given PC removed from a case. Garrity and Baris (1994) observed that the PC must be a person "of person firmness and tact, and able to withstand threats or allegations of the dangers presented" (p. 85). The appointing court order can anticipate such a problem and thereby preclude the filing of arbitrary, manipulative grievances (Garrity & Baris, 1994).

There is also a need to predict and anticipate problems along the lines of Martindale's (2004) "forewarned is forewarned." We have found it helpful to fast-forward to a hypothetical situation in which the PC has to confront the parent and attempt to work through an entire incident.

This should include having the parent feel defensive or hurt and feel that the PC is "on the other side" temporarily. We then have that parent seeing the same thing happen to their ex-spouse and conclude by feeling that the PC is fair, after all. It may be helpful then to reflect back on this when the confrontation actually occurs, as it surely will. It is also helpful to note that the PC will probably make some errors, but that the PC will be open and forthcoming, with the promise that the PC will always be trying to seek the best interests of the child/children.

Clearly, the effective PC must be experienced in working with high conflict families. Garber (2004) described the role as one where "he or she is able and willing to wade into entrenched conflict in a calm, focused, and assertive manner while never succumbing to the urge to become authoritarian or condescending" (p. 57), and being "able to tolerate ambiguity while maintaining the highest standards, objectivity, and goal orientation; able to apply his or her expertise flexibly and creatively; and able to follow up consistently and model healthy limits, boundaries, and routines to the participant-caregivers (Garber, 2004, p. 57).

The central thrust of remaining effective with appropriate boundaries is to stay focused on the children's interests and needs. It is not uncommon for the PC to be asked to resign by one of the parties who is

temporarily feeling that the PC has taken sides. While there are situations that warrant PC resignation or even removal by the court, these are relatively rare. In the instance of there being a temporary feeling of bias that needs to be processed, the PC needs to stand firm and realize that the child/children may be protected most by the PC continuing to stay on board and chart the course toward working through the particular dilemma. This is another instance where being thick-skinned and able to tolerate the anger and frustration of participants is vital to success. This is often a developmental challenge for PCs coming from the world of psychotherapy where such feelings are much less common experiences for the therapist.

## *RISK MANAGEMENT IN THE TRENCHES*

Matthew Sullivan has been a clear leader in the area of integrating professional ethics into day-to-day PC practice. Sullivan (2004) characterizes the PC function as one of the most difficult, risky, and challenging roles in professional psychology. He characterizes the function as a hybrid role mixing educational activity with mediation and arbitration skills, and "functioning on the interface of the contrasting cultures of law and psychology" (Sullivan, 2004, p. 577).

Data from Bow and Quinnell (2001) and Kirkland and Kirkland (2001) confirm the high level of actual risk for licensure board complaints and civil actions. These studies reveal that if you choose to venture into these areas of practice, CCE and PC, be prepared to deal with a board complaint and/or a lawsuit at some point. The whole point of risk management is to anticipate such events and have an open file mentality that is buttressed by being steeped in the practice of mandatory and aspirational ethics. The open file mentality refers to the Kirkland and Kirkland (2001) dictum to keep the case file with the ongoing notion that the entire file is going to be reviewed by opposing counsel in a lawsuit or by the practitioner's state licensure board. This is not a paranoid approach to practice. This is, unfortunately, a realistic approach to CCE and PC practice. Practitioners from the trenches would also recommend the development of a thick skin and a close, working relationship with an attorney who understands the dynamics of PC practice and the ethical/professional issues involved in this professional endeavor.

## *PC IS NOT PSYCHOTHERAPY*

Garrity and Barris (1994) observed that the PC is the only professional involved in the post-divorce process that has the specialized knowledge base, access to the entire reorganized family, and the power/authority, albeit court-granted, to make things happen post-divorce and truly assist with conflicts outside the courtroom. In addition, style of resolution via the PC process is designed to forge better communication rather than further alienate the parties. As observed above, the issues that arise are usually more psychological in origin and effect than legal. It is also recommended that there be a provision that requires progress reports back to the court every 6 months. While the issues are more psychological than legal, PC is not psychotherapy.

Early efforts toward the psycho-educational introduction to PC include an emphasis on the differences between psychotherapy and PC. When a person is seen therapeutically for depression or anxiety in psychotherapy there are important differences from PC. In psychotherapy, (1) the person has come in on their own, without court referral or appointment; (2) there is confidentiality, without reporting back to a court; (3) self-report is the only source of information, with no interviewing of third party or collateral sources; (4) there is no accountability, e.g., if the panic disorder patient does not do his/her cognitive therapy homework, the lack of compliance may be a matter for therapeutic discussion, but it is not reported to some outside authority such as a judge that can levy sanctions; (5) there is an effort to establish and maintain a therapeutic alliance built around highly individualized goals.

In PC there should be a healthy working alliance, but the focus of the contract is on the best interests of the children rather than on any one of the respective parents. In PC, the communication should be diplomatic and civil, but is likely to be more confrontational and direct than that found in therapy. PC is not emotion-driven or in search of the insight that is part of the goal of psychotherapy. PC works to establish pragmatic, child-specific parenting agreements. It is often a helpful landmark in the establishment of trust when PC participants see that the PC also holds the other parent to the same standards of accountability.

## *FUTURE DIRECTIONS*

The Family Law Section of the American Bar Association has taken the position that PC is the answer to management of high conflict

custody cases (American Bar Association, 2000). Courts, attorneys, and mental health professionals trained to manage chronic, recurring post-divorce disputes were identified as the professionals who should be put in place to provide these fundamental services to reorganized families. Despite being a risky and stressful venture for practitioners, the PC model continues to grow in popularity and use (Sullivan, 2004). We feel strongly that the reason for this growth is the excellence of the unique fit between complex post-divorce problems and the PC intervention, particularly when there are high levels of adherence to the sound practices of aspirational ethics and risk management.

The many children of divorce deserve no less than our best efforts to continue to develop the promise of this professional role.

The AFCC Task Force on Parenting Coordination (2003) opined that the parameters of crucial variables in the effectiveness of PC have yet to be fully explored. In particular, there is a need for empirical studies of the features that differentiate effective PC from ineffective PC. To date, most of the reports are anecdotal in nature.

Other important research questions revolve around facilitator and respondent characteristics. For example, are there common personal and/or professional attributes or communication skills that make some PCs more effective than others? Are there common elements to which parents or families benefit the most from PC?

Additional research might also look into the following: What are the typical areas of PC decision-making? What are the education and training backgrounds of PCs across the country? Is there a common length of service time? What are the types of issues or alleged infractions that comprise licensure board complaints and civil actions against PCs? What are the related disciplinary sanctions, if any? What are the re-litigation rates and costs for those who have participated in PC versus couples who have not had the exposure to PC? How are seasoned domestic attorneys and judges viewing the evolution and progress of the PC field?

Martindale and Gould (2004) emphatically noted that ethics must inform and drive the methodology of CCEs. Kirkpatrick (2004) observed that the CCE field has evolved to the point that there are clear standards to guide professional CCE behavior that can be tied to multiple sources. If the essence of forensic work is accountability as stressed in Greenberg et al. (2004), then the file of PC must follow the lead of pre-divorce CCE efforts in establishing the same goals and expectations for PC. The same level of professional maturity and identity that has flowed to the world of CCEs from the forensic scientist-practitioner

model needs to be equally applied to the PC field. In this way, we can assure that the best interests of children will be served equally by our professional interactions with courts and families both pre- and post-divorce. We feel strongly that FMHPs have just as much to offer post-divorce in the form of PC as FMHPs conducting CCEs have to offer the domestic court system pre-divorce.

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