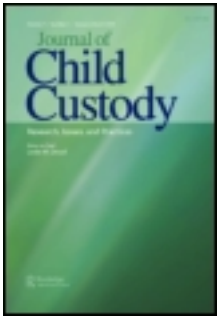

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Parenting Coordination (PC) Laws, Rules, and Regulations: A Jurisdictional Comparison

Karl Kirkland [a]

[a] UAB School of Medicine,

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Parenting Coordination (PC) Laws, Rules, and Regulations: A Jurisdictional Comparison

Karl Kirkland

ABSTRACT. Parenting Coordination (PC) is a well-established ADR process that involves court-appointed roles for family law experts across mental health and legal professions. PC involves a legal psychological hybrid case management role for practitioners that is effective precisely because of greater access and availability for families, unique knowledge base of the family law professional concerning dynamics of divorcing families, and the court-granted authority to help families resolve common post-divorce disputes. This paper compares the growth of the PC role across crucial areas of practice in different jurisdictions.

KEYWORDS. Jurisdictional comparison, laws, parenting coordination, regulations, rules for PC practice

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Karl Kirkland, PhD is an Associate Professor of Medicine, UAB School of Medicine, UAB Health Center, Montgomery Internal Medicine Residency Program. He practices and conducts research in forensic psychology with a particular emphasis in Parenting Coordination and domestic law/psychology.

Address correspondence to Karl Kirkland, PhD, Clinical and Forensic Psychologist, PC, UAB School of Medicine, UAB Health Center, 4371 Narrow Lane Road, Suite 200, Montgomery, Alabama 36116. E-mail: KKirk34@aol.com

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Parenting Coordination (PC) is here to stay. This multi-disciplinary, professional activity is rapidly growing as a court-appointed role for forensic mental health professionals (FMHPs) and attorneys (Coates et al., 2004; Kirkland & Kirkland, 2006; Sullivan, 2004). Mathew Sullivan, a national leader in PC development, describes PC as a hybrid, high-risk professional role that is potentially regulated by multiple review processes in numerous venues (Sullivan, 2004). Kirkland and Sullivan (in press) conducted a large scale national survey of PC practitioners. This comprehensive survey revealed that PC is clearly multidisciplinary in nature, practiced by psychologists, attorneys, social workers, licensed counselors, and bachelor's level practitioners in court-appointed roles (Kirkland & Sullivan, in press). These roles typically entail working with high-conflict, post-judgment families to help them resolve communication and co-parenting disputes without formal hearings, but with varying amounts of PC authority to resolve disagreements in an environment that allows for more efficient and less expensive access for families in crisis.

Sullivan (2004) defined the PC role as a legal psychological hybrid professional role, "demanding knowledge and skill in legal domains (legal procedure, relevant case law, etc.), psychological domains (family systems theory, etc.), and alternative dispute resolution (mediation and settlement processes)" (p. 576). The main focus of the PC role is to remain in the unique position of being able to assist courts and families in the challenging process of developing and implementing parenting plans, monitoring progress and compliance with the plan, facilitating communication, and resolving conflicts in a timely and cost-effective manner (Kirkland & Kirkland, 2006). Christine Coates has defined PC as an alternative court-sanctioned, dispute resolution and case management process (Coates, Fidler, & Sullivan, 2006). Matthew Sullivan (2006) adds that PC is effective because the role entails at least three factors that are unique to the PC role and that are not all found in any of the other roles involved. These three factors include: rapid access or availability to families, a unique knowledge base of the dynamics of family systems and divorce, and the authority to give them some help (Sullivan, 2006).

EVOLUTION OF THE PC MOVEMENT

It takes very little time for professionals who work in domestic law to discover that the limitations inherent in the court "process," due to

the very nature of the adversarial legal system, are often stumbling blocks to the goals of serving the "best interests of children," thus producing the frequently heard lament, "You don't want this to go to Court... It will just get nasty and make you crazy!" Similar discoveries and experiences across US jurisdictions have led to the integration of psychological science and alternative dispute resolution (ADR) practices into the family law arena. One of the finest products of this marriage is PC.

In an elegant article in *Family Court Review* in 2000, Firestone and Weinstein observe that while wonderful in many ways, the domestic legal system—by its adversarial nature—is not designed to consistently serve the post-judgment needs of families and the best interests of children. Sometimes the legal rights of parents and the psychological needs of children clash in the process of going through all the legal wrangles and hurdles involved in a divorce, particularly a high-conflict divorce. Smart (2002) observes that there is, therefore, an ever present and overarching need to keep the "voices of children" in the forefront of the process of finding solutions to these difficult re-organizations of family.

In the last two decades, PC has consistently emerged as the post-judgment solution for divorcing couples. Valuable pre-judgment work in the form of child custody evaluators (CCEs) has led courts to increasingly consider utilizing court-appointed professionals to assist courts and families with post-judgment challenges and needs. Kirkland and Kirkland (2006) observed that many of these needs and challenges are communication-based, psychologically-driven, developmental issues that do not fit particularly well into the legal funnel of access to courts after a divorce.

In September of 2000, the American Bar Association (ABA) convened a multidisciplinary conference sponsored by its Family Law Division known as the "Wingspread Conference." In this seminal international meeting of attorneys, mediators, and mental health professionals, conferees considered the best pathways for reform of the family court system in reference to families and the best interests of children. The continued development of the PC role emerged as one of the major recommendations. The Wingspread Conference report recommended that courts should utilize PCs in court-appointed central roles to assist the judiciary in the management of high-conflict divorcing families (ABA, 2000).

The Association of Family and Conciliation Courts (AFCC) has coordinated, facilitated, and encouraged the growth of the PC role. AFCC has contributed enormously to this growth in several ways: by providing a centralized, unifying international presence in the arena of domestic law and family courts from which a clearing house for coordination of PC information has been launched, a PC task force used to collect, compare and disseminate PC information, a peer-reviewed journal, *Family Court Review*, which has served as an excellent forum for PC development, and has served as the "home" for an online PC discussion group.

ON THE NEED FOR A CONSISTENT NOMENCLATURE

Andrew Schepard (2005) observed, "the child custody court has redefined its mission from deciding *which* parent should receive custody after divorce to determining *how* to involve both parents in the life of a child safely" (p. 5). PC offers the best hope for the future for courts and families in the quest to manage complex, high-conflict families. While the function of PCs has been similar across jurisdictions, the titles used in various states have almost been one for each different jurisdiction. After observing the interesting excursion in diverse nomenclature over the last decade, the AFCC PC study group recommended use of the term "Parenting Coordinator" for purposes of consistency of title. The use of a consistent term like PC has implications for risk management for practitioners (Kirkland & Kirkland, 2006).

PC is an ADR technique, but must be clearly distinguished from mediation, which entails confidentiality of content and is limited to facilitation of solutions for opposing parties. Inappropriate and inconsistent use of titles and functions in this arena has been found to be a major risk for board complaints and civil lawsuits (Kirkland, Kirkland, King, & Renfro, 2006). Thus, the multidisciplinary, court-sanctioned activity known as "Parenting Coordination" appears to be here to stay both in terms of a consistent professional activity with set guidelines and parameters, but also specifically identified by the term "Parenting Coordination (PC)" (AFCC, 2003).

ON THE NEED FOR STATUTORY CHANGE-DO WE REALLY NEED A PC LAW?

> "A parent's interest in the care, custody, and control of his/her child is perhaps the oldest of the fundamental liberty interests recognized by the Court." (*Troxel v. Granville* 530 US 57 65 (2000))

Legislatures pass laws in response to receiving input from the public through elected representatives that there is a need for additional statutory regulation or new law concerning some problem in society. The laws passed must then be able to survive or withstand challenges as to their constitutionality. AFCC national PC leader Barbara Bartlett, JD of Oklahoma, the first state to pass both a PC law and a constitutionality challenge of that law, noted that in the process of developing their PC policies statewide, she and her judicial colleagues realized that they had to have a new law to legally do what they were trying to do. In other words, without a new law allowing for such activity, a court cannot delegate decision-making authority that invades the high walls of the family to a third party, like a PC, outside of the court system (Bartlett, 2005). There has to be new law to allow a court to delegate such power to a PC. However, there is an alternative view and corresponding approach to implementation of consistent PC practices.

The alternative view observes that turning a carefully planned and crafted PC bill over to the legislative process can be risky. In a planning session in Alabama, our new Supreme Court Chief Justice Sue Bell Cobb (Personal Communication, September 12, 2007) observed that she would ultimately prefer to implement PC statewide by Court Rule coordination through Alabama's Administrative Office of Courts, which is the central coordinating body for the state's courts. This pathway gives those navigating the PC plan more control over the ultimate outcome. The legislative process can sometimes involve so much compromise and modification that the PC bill may be substantially altered by the time of final passage.

As the PC role has evolved there has been no question as to the basis of the locus of the authority for the role. The court with jurisdiction over a divorcing family has complete and sole authority over the direction of the case and certainly over the appointment of anyone the court deems appropriate to assist in the management of

the case. Courts have discovered the usefulness of involving mental health professionals and attorneys in the divorce process, both pre- and post-judgment. While the basis of the authority is the same, the scope and parameters of those roles has varied greatly across and within jurisdictions. The central focus of this paper is to explore the similarities and differences between the scope of those role functions between different jurisdictions.

The doctrine of *parens patriea* flows from the common law and refers to the responsibility of the King to take care of all subjects within the realm of the kingdom. In the common law, the doctrine refers to the role of the state as sovereign and protector of persons under legal disability such as children (Black, 1979). As the doctrine, the law, and governments have evolved, the meaning has grown to include the responsibility of the state to step in and protect and care for those who cannot protect and care for themselves. The law provides that only judges have the authority and power to encroach upon the legal boundaries of the family to ensure the welfare of children. Therefore, only judges can extend the power to others to do so and there are major limits about how much that power can be extended. In order for courts to be able to give that ability to another official body, such as an agency or a PC, new laws must be passed which allow for such extensions or courts must implement such rules across jurisdictions that allow for such court appointment and delegation of authority.

In the *parens patriae* role, courts may delegate authority and use PCs *(LS v. LF*, NYLJ Oct. 6, 2005). However, courts may not delegate their decision-making authority in domestic relations matters to the PC process. Courts may use PCs to help implement parenting plans, but the PCs may not make decisions that fundamentally alter or affect the rights of either parent (*Harris v. Iannaccone*, 107 AD 2d 429 1st Dept 1985).

Bartlett (2005) observed that constitutional challenges to PC laws will emerge along three dimensions: (1) equal protection; (2) substantive due process; (3) procedural due process.

The constitutional guarantee of "equal protection of the laws" means that no person or class of persons shall be denied the same protection of the laws that is enjoyed by other persons or classes in like circumstances in their lives, liberty, property, and in their pursuit of happiness (*People v. Jacobs*, 27 Cal.App.3d 246, 103 Cal. Rptr. 536, 543; 14th Amendment, US Constitution). Substantive due

process is the constitutional guarantee against arbitrary and unreasonable action (*Babineaux v. Judiciary Commission La*., 341 So. 2d 396, 400). Procedural due process flows from the 14th Amendment and is the principle that the parties whose rights are to be affected are entitled to be heard, i.e. notified by reasonable notice with an opportunity to object or present any claim or defense (*Parham v. Cortese*, 407 U.S. 67, 92S.Ct. 1983, 1994, 32 L. Ed. 2d 556; 14th Amendment, US Constitution). Matthew Sullivan noted that nine out of ten objections in PC cases are procedural due process based (Sullivan, 2006).

For new laws to stand up to constitutional challenges, it must be shown that a special need exists or a special population has special needs as in special education or as in the case of the state intruding on the sanctity of the family and removing children who are victims of violence. The answer to the challenge of a newly passed PC law is to demonstrate that the children of high-conflict divorce do represent a special risk population due to the toxicity of high-conflict divorces. This has enabled courts of appeal to affirm new PC laws as constitutional against claims that the new law was unconstitutional on the basis of some due process violation (see *Barnes v. Barnes* OK1, 2005 in reference to Oklahoma PC Act, 43 O.S. Supp 2001 120.1 et seq.).

The PC role has been implemented in various jurisdictions in one of four ways: (1) by order of the court having jurisdiction over the instant case, typically using a pattern order; (2) by local rule, i.e., a local circuit, district, or group of courts adopts a set of policies involving qualifications of PCs, role parameters, and typically use of a pattern order; (3) a state supreme court chief justice orders that an entire state system of court circuits begin utilizing PC in a standard manner with rules, qualifications of PCs, possibly a central register administrated or regulated by the central state administrative office of courts; or (4) a state legislature passes a new law creating the legal pathway and legal authority for circuit court judges to select, appoint, and monitor professionals to assist the courts in the management of high-conflict divorces. In the final analysis, a recommendation flowing from this paper is that regardless of which of the above modes is being used, the role of PC, as a consistent professional hybrid role, benefits from uniformity of name, scope of role, and specifics of practice across different jurisdictions.

At the same time, there are some advantages to diversity of role evolution and the existence of varied pathways to development of

any professional role. The differences allow for multiple different models to experience longitudinal developmental trials. AFCC then serves as the central home base and clearinghouse for collection and comparison of different PC models. The AFCC's PC online discussion group allows for rapid dissemination of information, case management consultation, and international discussion about PC role growth and evolution. For example there was recently a debate on-line about differences between PC and psychotherapy and another discussion about PC practice and malpractice insurance coverage. The PC model is being heavily utilized in different ways across multiple jurisdictions, states, provinces, and countries, and the result is that we are benefiting enormously as a practice community from this experience and the resulting comparative lessons through sharing of information. From those lessons we should now move toward uniformity and standards of PC practice.

KEY PROVISIONS OF A PC STATUTE

While there are differences among states and jurisdictions concerning the PC role, there are clearly common elements. These common elements comprise the key identity elements to a consistent PC professional role and can serve as a model guide for states considering PC legislation. It is suggested that a model PC statute, administrative order, or local pattern order be based on theses common elements. The key elements include: (1) basis of authority; (2) PC qualifications; (3) consent vs. non-consent of parties to participate; (4) issues of confidentiality; (5) term of service/removal/resignation; resignation; (6) domestic violence screening; (7) fee splitting and retainers; (8) quasi-judicial immunity for PCs; (9) scope of authority; (10) grievance procedures; and (11) continuing jurisdiction.

The findings below, presented by category, result from a comprehensive comparison of different state PC statutes and policies/regulations.

Basis of PC Authority

Only a court of competent jurisdiction can appoint a third party outside of the court system such as a PC to intervene in family

matters. Common law and constitutional protections protect the sanctity of the family boundary line. Family violence laws that originated in the 1960s and 1970s would be an example of government intervention in the family in the best interests of children. The court is the ultimate and only basis for PC authority, except as may be specified by state law. At the time of this writing, seven states have passed PC statutes. Table 1 presents a general comparison of those seven state laws (Yingling & Bartlett, 2006).

Coates et al. (2004) observed, ''PC necessarily entails a varying degree of fact finding and issue determination in each case. The degree to which this is seen as a usurpation of the court's inherent decision-making authority depends on a jurisdiction's interpretation of applicable laws and the local legal culture. The more that third-party professionals (e.g., evaluators, mediators, therapists, special masters, and referees) are looked to for assessment of a family's situation and relied on for recommendations as to 'best interest' determinations, the more likely the PC model will be accepted as yet another valuable intervention at the court's disposal to assist in dispute resolution'' (p. 248).

Idaho (2002, R. Civ P. 16 (1)) dealt decisively with the issue by clearly delineating areas where the PC may make ''determinations'' and areas where the PC may only make ''recommendations.'' Idaho Rule 16 (1) 5a states, ''The appointment of a PC does not divest the court of its exclusive jurisdiction to determine fundamental issues of custody, visitation, and support, and the authority to exercise management and control of the case.'' By contrast, this rule allows PCs to determine such matters as child care arrangements, manner, time, and place of pick up and delivery of the children, minor alterations in visitation with respect to weeknight, weekend, or holiday visitation, summer visitation dates, telephone schedules, approval of out-of-state travel plans, and approval of method and manner of communication. The order may also allow the PC to make recommendations to the court concerning supervised visitation, selection of the parent to make educational decisions, selection of the parent to authorize mental health treatment, appointment of a Guardian ad Litem, and financial matters such as child support.

Idaho further ensures attention to due process concerns by requiring that court referral to PC shall be an exception and not the rule and further that such referral be made only when: (a) there are intractable issues in the divorcing couple's relationship or where there has been

TABLE 1. Parenting Coordination Legislation

State	Title	Definition	Goals
Oklahoma 2001	Parenting Coordinator	Impartial 3rd party to assist parties in resolving parenting & other family issues in legal actions affecting a minor child	• Identifying disputed issues • Reducing misunderstandings • Clarifying priorities • Exploring possibilities for compromise • Developing methods of collaboration in parenting • Complying with court's order
Idaho 2002	Parenting Coordinator		• Collaborative dispute resolution in parenting • Empower parties in resuming parenting controls & decision-making • Minimize degree of conflict between parties for best interests of the children
Oregon 2002	Unnamed individual/ panel/ program	To assist the court in creating parenting plans or resolving disputes regarding parenting time & to assist parents in creating & implementing parenting plans	• Gathering information • Monitoring compliance with orders • Providing parents, attorneys, and court with recommendations for new or modified parenting time provisions • Providing parents with problem solving, conflict management & parenting time coordination services or other services approved by the court
Colorado 2005	Parenting Coordinator	Neutral 3rd party to assist in resolution of disputes concerning parental responsibilities	• Assist in creating guidelines for implementing parenting plan • Communication guidelines & skills • Parenting skill resources • Identify causes of conflict • Parenting strategies to minimize conflict

(*Continued*)

TABLE 1. Continued

State	Title	Definition	Goals
Texas 2005	Parenting Coordinator	Impartial 3rd party to assist parties in resolving parenting issues in suit affecting parent-child relationship	• Identifying disputed issues • Reducing misunderstandings • Clarifying priorities • Exploring possibilities for problem solving • Developing methods of collaboration in parenting • Educating re parenting plan & facilitating agreements • Complying with court's order
N Carolina 2005	Parenting Coordinator	Impartial person who meets qualifications	• Identifying disputed issues • Reducing misunderstandings • Clarifying priorities • Exploring possibilities for compromise • Developing methods of collaboration in parenting • Complying with court's order
Louisiana 2007	Parenting Coordinator		• Assist parties in resolving disputes & reaching agreements regarding children in their care [17 examples listed] • Refrain from facilitating an agreement that would change legal custody, physical custody, visitation, or child support

State	Requirements for Ordering	Provider Qualifications
Oklahoma	• Agreement or • High conflict with • Best interest of child • Must be able to pay	• Set by local rules • Minimum licensed professional with experience in family & children's services
Idaho	• Agreement • Appointed by the court	• Parties select who agree to • Be neutral to the dispute & parties • Criminal history check • No retainer required • Supreme Court list of mediators • Knowledge of child development • 20 hrs training in domestic violence

(*Continued*)

TABLE 1. Continued

State	Requirements for Ordering	Provider Qualifications
Oregon	•	• Established by presiding judge • May require mediation skills
Colorado	• Failed to implement parenting plan • Mediation inappropriate or failed • Best interest of child • Consider domestic violence impact on ability to engage in PC	• Current/past/future evaluator excluded
Texas	• Agreement or • High conflict with • Best interest of child • Family violence exclusion if verified by court hearing • Must be able to pay cost unless government agency provides service	• Set by court • Minimum mental health [counseling, education, family studies, psychology, or social work] bachelor's degree with additional 16 hrs PC training or mental health master's degree with emphasis in family & child issues • Minimum 8 hrs family violence training
N Carolina	• Agreement or • High conflict with • Best interest of child • Must be able to pay • Selected from list maintained by court • Required appointment conference for parties, attorneys, & parenting coordinator	• Masters or doctorate in psychology, law, social work, counseling, medicine, or related subject • 5 years related professional post-degree experience • Current license if applicable • 24 hours training in child development, high-conflict family dynamics, fstages & effects of divorce, problem solving techniques, mediation, & legal issues • Continuing education including group discussion & peer review support

(*Continued*)

TABLE 1. Continued

State	Requirements for Ordering	Provider Qualifications
Louisiana	• Good cause if previous child custody judgment entered other than ex parte order • Shall appoint with joint motion of parties • Must be able to pay • Appointment term for up to 1 year which is renewable • Family violence history exclusion	• Master's, PhD, or equivalent mental health degree [psychiatry, psychology, social work, marriage & family counseling, professional counseling] • LA licensed mental health professional • 3 years post-degree experience • LA qualified mediator • 40 hrs PC training; 14 hrs of family mediation training may be used towards the 40 hrs; training includes judicial system & procedures, ethical standards including confidentiality & conflicts of interest, child development & divorce impact, parenting techniques, parenting plans & time schedules, family systems theory, communication skills, domestic violence effects, & PC process & documentation execution • 20 hrs PC continuing ed every 2 years

State	Report to Court	Decision Making Authority	Citation
Oklahoma	• File decisions & recommendations within 20 days • Parties can file objection to PC decisions & recommendations within 10 days	• May not make decision on custody, visitation or support. • The decision cannot modify any existing court order; • The decision may not abrogate either parent's custodial or noncustodial rights.	43 O.S. §120.1 et seq.; www.oscn.net
Idaho	• Provide a minimum of 1 status report to the court every 6 months		Title 32 Domestic Relations, Chapter 7 Divorce Actions; 32-717D. Idaho Code; IRCP Rule 16(*l*)
Oregon			O.R.S. 107.425(3)

(*Continued*)

TABLE 1. Continued

State	Report to Court	Decision Making Authority	Citation
Colorado	• Records & testimony privileged except by agreement of parties	• Can be combined with appointment of decision-maker by agreement of parties • Decision-maker has binding authority to resolve disputes concerning children, including parenting time, disputed parental decisions, & child support consistent with substantive intent of court order • Decisions subject to de novo hearing	Colorado Revised Statutes, Title 14, Section 1, Article 10 [14-10-128.1]
Texas	• Records & testimony privileged • Report to court whether process should continue	• Facilitate agreements but no authority to make binding decisions • Submit agreements to court for approval	Texas Family Code §153.601-611 Revised 2007 by HB 555 [TFC §153.601-611, 153.007-0071, 153.133]
N Carolina	• Report to court, parties, & attorneys if order not in best interest of child or PC not qualified for issues • Written summary of each meeting & copies of written communication to parties & attorneys • Records & testimony subpoenaed only by presiding judge • Judge reviews records in camera & decides if to release	• Limited by agreement if parties consent to appointment • May be authorized to decide parenting plan implementation issues not specifically governed by court order if parties unable to resolve; binding until court reviews	North Carolina General Statutes Section 1. Chapter 50 Article 5 [HB 1221]

(*Continued*)

TABLE 1. Continued

State	Report to Court	Decision Making Authority	Citation
Louisiana	• Notify court of conflict of interest • Shall not be called as a witness without prior court approval based on demonstrated need for testimony & evidence cannot be adduced from other sources • Prepare interim & final reports as ordered by court & other reports when necessary • Distribute reports to court, parties, & their attorneys	• If parties unable to reach agreement, PC may make recommendation in report to the court for resolution of dispute	Louisiana Revised Statutes 9:358.1-358.9; 2007 Senate Bill No. 208. Act No. 265

Used with Permission of Drs. Yingling and Bartlett.

Note: seven states currently have passed PC legislation; other states have legislation or administrative court order plans underway, as well as use of related statutes for authority to order. Chart compiled by Dr. Lynelle C. Yingling, LMFT [Lynelle@systemsmediation.com]. Thanks to Barbara Bartlett, JD for initiating collection of state legislation in AFCC publications and reviewing this chart.

frequent re-litigation; (b) the well-being of the children is placed at risk by the parents' inability to co-parent civilly; (c) presence of domestic violence; (d) one or more parent is chemically dependent or mentally ill; (e) when there are other exceptional circumstances that require such appointment to protect the child's best interests.

PC Qualifications

In a recent national PC survey, Kirkland and Sullivan (in press) found that PC qualifications ranged from bachelor's degree level family court personnel to attorneys and PhD level mental health providers. Most states require all practitioners to have completed a 40-hour bar-sponsored domestic mediation training program, to be trained in domestic violence screening, to have a certain amount of experience and knowledge of family law, and to document knowledge

of the unique dynamics of divorcing couples and families. Many states also require passing a general criminal background check, and a specific sex offender screening.

Many states require that PCs have a minimum of a master's degree in a mental health discipline or a law degree, five years of professional experience, and a current license in their area of practice. North Carolina requires documentation of at least 24 hours of training on the dynamics of high-conflict families, stages of child development, effects and processes of divorce, mediation and problem-solving techniques, and the basics of domestic law. In Vermont PCs are required to have 160 hours of training including: 60 hours of training in mediation; 24 hours of domestic violence and substance abuse training; 20 hours of training in family law; 20 hours of training in Vermont family law and court procedures; 12 hours of PC training, including "shadowing" of two PC cases; and eight hours of training in report/document writing and giving testimony in court. This is sharply contrasted with the Florida experience described below.

In 2005, the Florida legislature passed a PC law that was subsequently vetoed by their Governor Jeb Bush. One reason for the veto was that the coalition pushing the bill forgot to include the domestic violence community in their pre-game plans, but the bigger barrier was that Governor Bush wanted to "de-professionalize" the PC role so that faith-based volunteers could also do PC. Linda Fieldstone (2005) noted that the irony of this is that it is difficult enough to find trained folks to do this work, and it is hard to imagine that one could find volunteers to work with high-conflict families. At any rate, Florida included the clergy as potential PCs to appease the Governor's request for involving "faith"-based PCs in the pool of providers.

AFCC (1995) has suggested a minimum of a master's degree in a mental health field for child custody evaluators (CCEs). However, the child custody evaluation is a forensic evaluation that should involve multiple data sources, including psychological testing, which may assume a minimum of a master's degree. Conceivably PC, as a dispute resolution process, can be conducted by individuals with a bachelor's degree. It is hard to imagine that any less training could result in consistently good outcomes, given the challenges and complexity of dealing with high-conflict families.

PCs must have mediation training, but they are not doing mediation. PC is clearly an ADR role, but has to be explicitly defined as "not mediation." PC has arbitration elements in most states

(Coates et al., 2006). PCs must know their local statutory or other authority and then follow those rules.

Consent vs. Non-Consent to Participate

A major feature that must be determined for PC practice is whether or not parties may be forced by courts to participate. Forcing divorcing couples to participate in yet another court-sanctioned activity when their emotional and financial resources may be spread thin is stressful and challenging. Understandably, couples could feel that the court was going too far. In order to go this far with government intrusion into the family, courts must justify the intrusion by demonstrating that there is a special group, i.e. children, at some unique risk, i.e. the toxic effects of high-conflict divorce. This is an example of how a PC law might survive a constitutional challenge, such as the one that occurred in Oklahoma O.K. (Bartlett, 2005; OK1, 2002). This would be an example of successfully defending a constitutional challenge via an equal protection argument. One way to avoid the whole issue is to avoid the challenge by simply making the law such that a divorcing couple must give their consent to be referred for court-ordered PC services. Barbara Bartlett, JD believes that states need a statute in order to "force" people to go to PC, and observes that a majority of PC statutes include that power.

Scope of Authority

Scope of authority refers to the areas of decisions and extent to which PCs can exercise their authority in working with post-judgment families. The majority of jurisdictions see the role as one of implementing parenting plans rather than deciding about the plans themselves. Anyone doing domestic work knows how quickly disputes can arise in post-judgment families. This is complicated by the fact that it can take up to six months to get back before a judge. The AFCC Task Force on PC stated, "a common limitation on PC authority is that s/he cannot make changes to a custody determination, make relocation orders, or substantially alter existing access schedules" (AFCC, 2003, p. 15). Typically PCs cannot modify child support, except in Colorado where they may alter child support if it relates to parenting time issues.

Common issues the PC is authorized to address include: time sharing arrangements like summer schedules and holidays, daily routines, day

care/baby sitting, transportation and exchange, medical/dental care, psychological care, education, discipline, extra-curricular activities, clothing, appearance, methods of travel, communication and related "parenting" issues and decisions.

Probative, Evaluative and Arbitrative Components

> "PC without some arbitration is just mediation—PCs need some decision-making authority." (Cavallero, 2005)

While PC is an ADR process, it is clearly and distinctly *not* mediation. Unlike mediation, PC includes investigative, probative, evaluative, reporting, and decision-making components designed to help post-divorce couple navigate parenting disputes. PCs may utilize evaluative procedures such as psychological testing and other probative measures such as interviews with third party collaterals or record review in order to learn more about the parties or related issues. Such components are necessary to the ability of the PC to be able to make decisions in the best interests of the children and the families involved in the PC process.

Confidentiality and Ex Parte Communication

PC is not confidential in the same sense that psychotherapy or mediation is confidential. Most PC has the limited confidentiality that is associated with court-appointed work. The ability to report back to the court is felt by some to be the hallmark of the role, the "teeth" that underlines the importance that participants respect PC authority. This reporting back to the court feature clearly distinguishes PC from mediation, and gives PC more of an arbitration quality. In California, PCs are called special masters. Although the special master process varies across jurisdictions in California, it is non-confidential and special masters have the discretion of whether or not to testify or whether the issues will be heard by the court *de novo* (as though it was a new issue submitted to the court).

While the PC process is generally not confidential, PCs are typically prohibited from having *ex parte* (to one party only) communication with the court. This simply insures that the PC will not have private meetings with the court or the attorneys outside of the presence of all the parties, which keeps everyone "on the same page," fully informed, and provides protection against procedural due

process concerns. These factors should be addressed in the appointing order as well as the PC agreement.

Term of Service/Removal/Resignation

The ability to end a PC relationship is just as important as the basis for starting such a relationship. Most states have some definable term of service. Matt Sullivan (Coates et al., 2005) suggests one-year terms that renew automatically without an objection or motion to the contrary. In other words, the PC is automatically reappointed for another year if no one files a motion for the service to end. Terms less than six months hardly seem long enough to do any meaningful work and most PCs in a recent national survey (Kirkland & Sullivan, under review) typically work with families for several years after initial appointment.

There must be a valid, accessible way for all parties to ask for help and direction from the court concerning appointment and termination. This would fall under protection of procedural due process concern for all parties. If there are valid motives that are not manipulative or avoidant in nature on the part of the parties, there always should be a mechanism for review and removal (or resignation on the PC's part). The reviewing body should always first be the appointing court rather than a licensing board or another circuit court. Many times manipulative parties have filed grievances, board complaints, or civil lawsuits just to get a given PC removed from a given case (Kirkland & Kirkland, 2006; Kirkland et al., 2006).

PCs and Domestic Violence (DV)

Severe domestic violence should (and does in most states) exclude PC as a possible court-sanctioned service. At least two states (Florida and Massachusetts) ran into problems with their proposed statute because they failed to adequately include the DV community in legislative planning process (Coates et al., 2005). There seems to be universal agreement that severe DV and ADR techniques do not mix. However, PC advocates feel that in lesser cases of DV or suspected DV, the existence of PC can actually add a layer of safety and protection for the victim, but not in cases of severe DV. Linda Cavallero (2005) observed that PC adds a layer of increased safety and protection by preventing coercion.

PC, as an ADR process, must screen for DV. There is an excellent screening instrument available from the Michigan Domestic Violence Program (available at http://www.courts.michigan.gov/scao/resources/standards/odr/dvprotocol.pdf). Where DV groups have objected to legislation, it was determined that the main reason for the opposition was that the DV coalition did not really understand the PC process and wanted to ensure that the PC coalition was fully cognizant of the need to screen for DV in order to make sure that coerciveness did not enter the process when PC practitioners do not fully appreciate the dynamics of DV. Linda Fieldstone (2005) observed that once the DV group understood and got to know the PC group, they became friends and mutual support ensued.

It is vital to distinguish between high-conflict couples and DV couples. Koch and Pincolini-Ford (2006) note that in high-conflict cases there is relatively equal balance of power, whereas in DV there are excessive amounts of entitlement, control, violence and the ensuing imbalance of power. Safety and protection are first priority goals in DV cases and may not even surface in high-conflict cases. In high-conflict cases there is no legal presumption concerning custody, whereas in DV cases many states mandate by law that legal and physical custody be granted to the non-abusive parent (Dalton, Carbon, & Olesen, 2003).

Fees and Retainers

Kirkland and Sullivan (in press) presented results of a national survey of PCs. These revealed that fees ranged from $20 to $300 per hour with the average fee being $200 per hour. Ninety percent of their sample used retainers, with an average of 20 hours paid for up-front in the form of a retainer. Some states, such as Oklahoma, use child support guidelines to determine fee splitting (Bartlett, 2005). For example, if the income splits along 70–30% lines, the fees for PC would be split accordingly. Fee arrangements need to be addressed in the court order and the PC agreement.

PC is hard work. Most practitioners charge more for PC than for their regular fees for psychotherapy. Many practitioners indicated that they have a forensic rate and a therapy rate (Kirkland & Sullivan, in press). Some PC agreements allow the PC to realign or reassign fees for a given session if it is determined that one

parent is abusing the process by manipulative behavior. Fees typically include all PC services such as record review, collateral interviewing, email monitoring and review, investigative time (e.g. reviewing school or medical records), conferring with attorneys or therapists, travel expenses and time, report preparation, and court appearances.

Quasi-Judicial Immunity and Grievances

PCs cannot have absolute immunity from civil liability because there must be some pathway for legitimate grievances. However, when court-appointed, PCs have consistently been granted quasi-judicial immunity (Kirkland et al., 2006). This protection typically results in civil suits being dropped at the summary judgment phase of the lawsuit, which is really the first legitimate stage where a lawsuit can be dismissed without violating plaintiff due process rights. Even frivolous plaintiffs have a right to be heard in some venue. Several authors have made the strong point that the appropriate venue is the original court of jurisdiction rather than having the plaintiff file a lawsuit in another court or file a licensure board complaint. Clearly, as Kirkland et al., observed, sometimes this is done for purely vindictive or manipulative reasons. For this reason, the court of original jurisdiction, the only venue with true experience and perspective on the particular case in question, is the proper locale to begin a review process of allegations against the PC.

Pattern PC orders should spell out each step involved in a grievance procedure. For example, the pattern order can spell out that the party must bring the grievance to the PC's attention in a meeting to first explore if the issue can be resolved through clearing up of communication channels. Should that not produce resolution, the parties (client and PC) put their issues in writing for the record. Should that process not result in resolution, the parties and the PC take the matter to the appointing judge for review. Should a formal hearing and ruling not resolve the issue, the aggrieved party can then take the matter to a licensure board or another court in a civil suit. At that point, most PCs would most likely ask to be relieved of their duties. However, one practitioner relates that attorney advice was to not resign and that resignation would imply wrongdoing. It seems hard to imagine continuing in a case as both a PC and a defendant in a lawsuit.

De Novo Review

In states where PCs are decision-makers, there is often the process of *de novo* review (trying a matter anew) by the court. This simply means that the PC process is confidential and findings of the PC are not relayed to the judge when a PC decision is "appealed" to the Judge. The parties then have the opportunity to present their case/issues to the court with no bias as to how the PC "ruled." This provides for another layer of constitutional protection of all parties and at the same time allows or assumes that many, if not most, PC decisions would be accepted by the parties, and everyone moves forward.

Continuing Jurisdiction

Ongoing PC management of families through the PC process lasts for years, long after cases are removed from active court dockets. Therefore, courts of jurisdiction must anticipate how to allow the PC to remain active and viable while the case may no longer be technically "active." However, Coates *et al.* (2004) note that continuing jurisdiction can be properly invoked and secured by motion filed with the original action which anticipates the involvement of the PC. In California the PC process is handled through their Special Master section under the rules of Civil Procedure, which also allows that a case does not have to be active in order for the PC to function with the continued backing of the court. Coates et al. (2004), suggest use of specific language in the appointing order as follows:

> The court shall have continuing jurisdiction for purposes of modification, enforcement, and clarification of the parent plan until the term of the PC has expired or the PC's appointment has otherwise been terminated, and all objections are resolved. The court's retention of jurisdiction does not affect the finality of the underlying judgment, which is intended by the court to be a final judgment. (p. 251)

SUMMARY AND RECOMMENNDATIONS

PC appears well established throughout North America. PC evolution and growth has benefited equally from the diversity of PC

models across jurisdictions and the ensuing unifying efforts of AFCC coordination of those multi-state labors. The best outcomes come from multiple experimental trials across a variety of settings and populations. We now have the results of a decade of experimental trials of PC growth and evolution across multiple jurisdictions. There are common elements to PC practice, PC agreements, and PC statutes across jurisdictions. There are common objections to PC legislation and common components to successful PC practice. There are common experiences among those who have been successful in passing PC legislation, and among those who failed. The professional practice of PC benefits from formal study of these developments.

As PC has become more firmly established as a court-sanctioned, multidisciplinary post-judgment ADR process, the available evolutionary paths of development are: passing PC legislation, practicing PC by local court rule, practicing PC via state supreme court promulgation of new rules of civil procedure, use of pattern court orders, and through use of PC agreements that operate by mutual attorney sanctioned consent. Now that AFCC has established official guidelines for the practice of PC (2006), practitioners can and should expect to be held to certain standards of practice. Thus, enters risk management and liability issues into the discussion. It is well established (Bow & Quinnell, 2001: Kirkland & Kirkland, 2001, 2006) that PC is a part of the world of practice that is associated with increased risk of civil lawsuit and bar/board complaints. Kirkland and Kirkland (2006) observed that there may even be more risk for professional problems with PC because of the protracted long-term nature of the relationship compared to briefer exposure to risk associated with child custody evaluations and mediation. PC also benefits from the gristmill of growth through the processes of practitioners, their regulatory bodies, and their malpractice carriers learning about patterns of acceptable, ethical practice through the difficult feedback of board/bar complaints and civil lawsuits (Kirkland, Kirkland, & Reaves, 2004; Kirkland & Kirkland, 2006).

PC programs must be established firmly on the constitutional bedrocks of statutory authority and judicial review. The appointing court retains exclusive and ultimate jurisdiction over the case, but is able to delegate crucial management and implementation functions to PCs in the best interests of children and families. Then the PC can implement parenting plans and resolve disputes in a much more timely and accessible manner, thereby reducing re-litigation rates and providing

for a smoother flow of ongoing co-parenting. The accessibility, vantage point, and knowledge base of PC jointly keep parents from further depleting their financial resources, attempt to shield children from toxic conflict between parents, and facilitate low-engagement, low-conflict parallel parenting.

PCs are in a unique position to point out to courts and families that the majority of issues that arise post-divorce are psychological issues rather than legal issues. Further, the legal system is ill-equipped to solve these issues without the help of the PC process. PC assessment and ongoing intervention, with the full backing and review of the courts, is the more effective solution.

H.D. Kirkpatrick (2004) noted that the CCE field had evolved to the point that there are clear standards to guide professional CCE behavior that can be anchored to multiple sources. Kirkland and Kirkland (2006) observed that the same level of professional growth and maturity has occurred in the PC world. This multi-state, multi-jurisdictional survey leads to the following current common guidelines for PC legislation:

1. Those writing proposed PC legislation should demonstrate awareness of equal protection and due process concerns by citing the epidemiology data of high-conflict divorce, which helps legislators and courts of appeal understand that PC is used in response to a special population of high-conflict parents that can potentially bring great harm to children. These premises justify the court's "intrusion" into the family for welfare of the children. Before expending excessive time exploring legislation, be sure this is the path your state/jurisdiction wants to pursue. Some states have been more pleased and successful with implementation of PC practice from the pathway of court rule and implementation from the level of the State Supreme Court.
2. Those exploring related lobbying efforts should realize that AFCC cannot lobby, but can continue to do what AFCC does best, i.e. facilitate collection and dissemination of information and data concerning a given area of interest in family law. Then it becomes imperative for individual members to act and become "conveners" of PC information and related developments. It is also imperative to bring all related parties to the organizational and discussion meetings concerning planned legislation or court rule implementation. It is important to bring everyone to the table to get input

and hear concerns: legal services, state bar association, state psychological association, state social work association, state counseling association, state ADR group, administrative office of courts, domestic violence coalition, and if possible, representatives from the state supreme court, and the legislative reference service.

3. This post-judgment, court-sanctioned ADR activity should be routinely referred to and identified as "Parenting Coordination." Pattern court orders and PC agreements should be developed and consistently used across jurisdictions. For purposes of malpractice protection when an individual is appointed as a PC, s/he should be specifically listed in the order by her/his legal name. PCs should work only when court-appointed or hired by mutual consent.
4. The order and agreement should specify that the appointed PC practitioner serves as an officer of the court and as a part of that role is granted quasi-judicial immunity from civil lawsuits. The order and agreement can also point out that this provision protects the PC from frivolous and manipulative complaints, but does not remove the responsibility for the PC to perform her/his duties in an open, objective, fair, and professional manner. The PC should expect to be held accountable to current AFFC's PC guidelines for practice. The PC should practice with the Greenberg et al. (2004) mindset of ultimate accountability and an open file mentality.
5. The order and PC agreement should address the common areas of PC functioning identified in this multi-state/jurisdictional comparison including: Basis of Authority, Scope of Authority, Term of Service, Retainer/Fee Arrangements, Grievance Procedures, Resignation Procedure, Limited Confidentiality and Testimonial Privilege, *De Novo* Review, Continuing Jurisdiction, *Ex Parte* Communication, and Collateral Interviewing.
6. The areas of CCE and PC have been the subject of a great deal of professional attention in the form of recognition of increased risk of licensure/regulatory/bar complaints. The proper forum for review of PC bias is the court of original jurisdiction over the case. Complaining parties should first have to be reviewed in the original venue prior to taking the complaint to a new or different level.
7. PCs should develop routine office protocols for screening and intake procedures for newly appointed cases to ensure

standardized treatment for parties and their attorneys. It may be most helpful for the PC practitioner to have a well-informed, trained office manager to routinely deal with intake communications and procedures.

8. Due to the prolonged nature of the PC process, compared to mediation and CCE, which are both much briefer in nature, there are greater risks associated with PC practice. As a result, PCs need to recognize that PC is a high-risk professional activity for practitioners. PCs should be very aware of this in terms of self-care and stress management skills. Proper boundary-setting is essential to healthy PC practice.

The PC movement is part of an overall judicial philosophy that is driven by the goals of protecting children from the ravages, destruction, and confusion that accompany high-conflict divorces. PC is the preeminent ADR post-divorce process that offers definitive hope for those dedicated to shielding children and families from such emotional abuse and distress. This paper demonstrates that there are multiple areas of continuity, convergence, and consistency across PC practices among state and provincial jurisdictions. The professional/ethical practice of PC clearly benefits from coordinated efforts to study and improve the quality and consistency of PC services across jurisdictions. We share a duty to protect and shepherd the continued development of this valuable professional role and to always remember, "with great power comes great responsibility."

The PC field begs for more research. Empirical investigations of PC effectiveness and follow-up studies of families in longitudinal PC relationships are needed. The field needs study of what goes wrong in high-conflict families. Of equal importance is the need to study and learn from families who are able to avoid intractable conflict. There is much work to be done in this area.

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