



Non-Litigation Dispute Resolution Options for Parents

By Mara Berke

Why delay resolution and enter into the frustration and expense of litigation in the ever-changing family law court? Why subject yourself and your children (at a certain age) from offering live testimony? Why not take some modicum of control over your family matter and put it in your own hands or that of a trained professional? Why role the dice? In hindsight, family law litigants may likely look back on their years of litigation and wonder why they did not just agree to something, instead of enduring several years of turmoil and spending money that could have been saved for college tuition or retirement. Reducing conflict, and moving on with life as a reorganized family, has substantial emotional and financial value.

Divorcing parents have alternatives to the adversarial litigation process and continuing disputes over custody of their children both during and after divorce. This is enhanced by AB939, a new law that allows oral testimony in temporary hearings, the re-invention of the role of minor's counsel, and the allowance of children's testimony at age 14, effective in 2012. Given the courts' funding problems and the slow process of resolution in this forum, families would best be served by seeking alternatives.

The start of a divorce case and how parents approach it has a great impact on the proceedings and their parenting relationship. Once a case starts off on the litigation path, it can be very difficult to move parents from their positions as they tend to become more entrenched, rather than cooperative. On the other hand, once parents experience the expense and frustration of a hearing, continuances and not having all issues resolved by the court given the state of the court system, they may shift. It is extremely important at the beginning of the dissolution process to provide parents support and educational information to help them focus on their children, rather than their anger at the other parent and past wrongs. This way, parents can make more educated choices including the avoidance of litigation. Attorneys should help steer parents to attend divorce support groups, seek family or individual therapy and co-parent counseling and education. If these steps are taken at the beginning of the process, it may enable parents to work together more cooperatively and choose alternative dispute mechanisms.

These alternative approaches to conflict resolution include mediation (free in conciliation court services or at cost with private mediators), collaborative family law, co-parent counseling and education, private judging and settlement conferences, case managers, and parenting coordination. A collaborative practice or collaborative divorce (also called "no-court divorce"), offers divorcing couples

the support, protection, and guidance of lawyers, child and financial specialists, divorce coaches, and other professionals, with the expectation that the case will not go to court. (See www.lacfla.org and www.collaborativepractice.com for more information.)

Parenting coordination is a child-focused alternative dispute resolution process in which a mental health or legal professional with mediation training and experience assists parents to implement their parenting plan by facilitating the resolution of their disputes in a timely manner, educating parents about children's needs, and with prior approval of the parties and/or the court, making decisions within the scope of the court order or appointment contract. ("Guidelines for Parenting Coordination Developed by the AFCC Task Force on Parenting Coordination" (2006) Fam. Ct. Rev., Vol. 44 No. 1, 164-181, 165.) The Association of Family and Conciliation Courts provide the model standards and guidelines for the parenting plan coordinator's role, practice, and training, and the model standards for divorce mediation. (See www.afccnet.org)

Where the parties do agree

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to the appointment of a parenting plan coordinator, California mandates that the appointment be by a written stipulation and order (See www.lacba.org and www.berkefamilylaw.com for a copy of the stipulation.) The types of decisions set forth in the stipulation may include a variety of issues, such as: clarification of ambiguous or uncertain provisions in the court-ordered parenting plan; establishing times, places and conditions for exchanges of the child under a court-ordered parenting plan; occasional changes to the visitation or parenting-time schedule for holidays, vacations, or special days; permanent changes, minor or significant, to the parenting schedule; the child's participation in school or community activities or programs; information exchanges between households; travel orders; childcare decisions; medical decisions; and choice of schools. Other issues include special education and special needs services; parent education and counseling; psychological testing of parents and children; appointment of minor's counsel; permanent modification of legal custody or decision-making authority; supervised visitation; and parent participation in alcohol

or drug testing or monitoring. ("Planned Parenthood," *Los Angeles Lawyer* (April 2009)).

One goal of the parenting coordination process is to move the parents out of the adversarial court-litigation process into one that establishes new rules in co-parenting, which enables — minimally — parallel parenting. Parallel parenting is where parents have little or no interaction with each other. The parenting plan is written in detail with no loopholes or vagueness subject to interpretation. The parents do not engage in flexible scheduling and they work independently for their child's best interest. Both households also function independently. Parents may also learn co-parenting skills in this process but more typically, parallel parenting is the outcome.

The parenting plan coordinator will first hold a mediation. Then, the coordinator will make a decision, after consulting with the parents (and others, if needed), and provide the parents with notice of the decision. This is usually a written decision briefly explaining the recommendations and findings. This decision will later be formalized.

One significant benefit of the use of parenting plan coordinator is that when parents are in conflict and are unable to reach a decision, the coordinator is someone knowledgeable about the children and divorce who will be able to resolve the issue (assuming the parent does not challenge the decision in court). Parents can then move on with their lives and have some resolution, which reduces conflict. Parents also have access to a professional who knows their family well and can assist with parenting issues much more quickly and cost effectively than with court intervention. Another benefit is that the coordinator can monitor e-mail communication before the e-mail is sent to the other parent, or can act as an intermediary by forwarding the e-mail to the other parent. This allows insightful parents to learn how to change their patterns of communication with the other parent, which will ultimately help them in the parenting relationship, and hopefully have an impact in future relationships. The coordinator is a forum for parents to be heard and an advocate for what they believe is best for their children. Given the negative effects of sustained conflict on children and on parents, a decision by the coordinator may be the best outcome for everyone even if the decision contains disappointing elements.

Not all processes are perfect and the choice to use a parenting plan coordinator is no exception. Parents must agree upon and be subject to a formalized stipulation. Some parents simply cannot overcome that hurdle. Once that hurdle is passed, parents essentially turn over their authority to a third person. Giving up control to someone else about your children can be daunting and create uncertainty and anxiety. It is inevitable that a parenting plan coordinator will make decisions that a parent does not agree with at all. If parents choose to dispute an order made by the coordinator, then the purpose of this process, which is to avoid conflict in litigation, fails. Clearly, careful choosing of a parenting plan coordinator is wise, as this person can potentially play a big role in your children's lives and your own.



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