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September 17, 2003
Columbus, Ohio
OSBA/CLE Institute

ALTERNATIVE DISPUTE RESOLUTION OF FAMILY LAW ISSUES; SELECTING THE ADR PROGRAM ACCORDING TO THE CONFLICT LEVEL AND ISSUES IN THE CASE

FIRST OPTION: MEDIATION:

I. WHAT IS MEDIATION?

- A. Mediation is a collaborative, non-adversarial conflict resolution process in which the parties to a dispute are aided in their settlement negotiations by a neutral and impartial third party, the mediator. The mediator does not have the power to impose a resolution; rather the role of the mediator and the goal of the process are to help the parties achieve their own resolution.
- B. The mediator controls the process; the parties control the outcome. The mediator is responsible for establishing the framework and facilitating or assisting the negotiation process. The parties make their own decisions and assume responsibility for reaching or not reaching an agreement.
- C. Mediation describes the intervention of third parties in the dispute resolution process. The mediator, a third party who is not involved in the controversy, facilitates and coordinates the negotiations of other.
- D. Mediation enables the parties to communicate perceptions, feelings and information directly to one another in a controlled environment. Intense conflict tends to generate misunderstanding and suspicion and having the parties talk directly to each other often reduces the hostility and facilitates rational discussion.
- E. The role of the mediator is to facilitate communication between the parties, assist them in focusing on real issues of the dispute, and generate options for settlement.
- F. Goals of Mediation include the following:
 - 1. To have the parties make an agreement;
 - 2. To improve the relationship between the parties;
 - 3. To resolve the underlying conflicts;
 - 4. To improve communication between the parties;
 - 5. To prevent problems from recurring; and
 - 6. To avoid or reduce involvement in the court system.

- G. Mediation is most likely to work when:
 - 1. All the parties want a resolution or at least a change;
 - 2. All the important stakeholders are present;
 - 3. The parties are able to articulate their issues/concerns;
 - 4. The mediator is able to control and sustain the process; and
 - 5. The parties are capable of living up to their promises.

II. WHAT ARE THE BENEFITS OF MEDIATION?

- A. Resolve a problem, dispute or underlying conflict.
- B. Minimize, enhance or avoid involvement in the Court system.
- C. Improve communication, understanding and empathy between parties.
- D. Clarify areas of agreement and define next steps to resolve disagreement.
- E. Prevent problems from recurring. Mediation gives the parties a sense of ownership both in the dispute and its resolution, making voluntary compliance with the agreement more likely than in the case of an imposed solution.
- F. Mediation can be useful when one or more of these factors are present:
 - 1. The parties want to retain control of the decision;
 - 2. The issues are complicated by a strong emotional element;
 - 3. The parties must interact together in the future;
 - 4. A party wants to maintain a relationship with the other in the future;
 - 5. A party is uncomfortable confronting the other without someone else present;
 - 6. The parties want a decision to be reached soon;
 - 7. Many people are involved or indirectly affected;
 - 8. One or both parties want to avoid a Court trial or adversarial litigation;
 - 9. One or both parties want to keep the resolution process private; and
 - 10. One or both parties want to reduce legal fees.
- G. Mediation can be effective and beneficial in high conflict cases. Mediation can be extremely effective with parties who have a great deal of verbal conflict. These parties usually have good verbal skills that can be useful in the mediation and they are often looking for a less stressful method of communicating with each other in the future. Mediation techniques tend to work well with these participants.

III. WHEN IS MEDIATION NOT APPROPRIATE?

- A. A serious incident has just occurred and people are still too upset to have a useful conversation about it; delaying the mediation may be more effective.

- B. One party is unable to negotiate. The mediator determines that a party seems incapable of listening to anything the mediator says or seems too disturbed to negotiate a workable agreement. This may be due to severe mental illness.
- C. A party is under the influence of drugs or alcohol at the time of the mediation session.
- D. A party is unable or too afraid to express his/her concerns even with balancing of power techniques or safety precautions in place. This may occur in victims of physical or mental abuse.
- E. Key participants are unwilling to participate in the mediation.
- F. The main problem is unmediatable or one party would be better off using the courts or another forum. (This determination usually cannot be made until after mediation has been attempted.)

IV. ASSESSING WHETHER THE CASE SHOULD BE MEDIATED

- A. Talk to the client about mediation as an option for resolving disputes and explain the differences between litigation and mediation. Discuss the benefits and limitations of mediation. Give the client enough information for him/her to make an informed decision about participation in mediation.
- B. If the client decides to participate in mediation, contact opposing counsel to suggest mediation or ask the Judge or Magistrate to order a mediation screening. Participate in the selection of a mediator. Know the qualifications, styles, procedures, and success rates of several mediators and recommend those you think will be most suited for the particular case. Mediation is a second profession for most mediators. Most mediators also have training in law, psychology, social work, sociology, education or religion. Consider whether a mental health professional or an attorney might be more helpful in a particular case. Mediators are usually willing to discuss their style of mediation and their training, experience, and areas of expertise with attorneys or potential clients.

V. PREPARING THE CLIENT FOR MEDIATION

- A. Meet with your client before the first mediation session to analyze the case thoroughly. Make sure the client knows the strengths and weaknesses of the case. Describe likely outcomes if the case is litigated - e.g., both best and worst case scenarios. Give the client a rough idea of the potential cost of litigation. This information will help the client make informed choices about where to stand firm and where to compromise in mediation.
- B. Help your client identify and prioritize her/his goals for the case. This kind of discussion will help your client avoid "tunnel vision." Encourage the client to

keep an open mind about possible acceptable resolutions that would achieve some or all of the client's goals. A frequent benefit of mediation is the opportunity for the client to consider different ways of achieving his/her goals.

- C. Encourage your client to cooperate with the mediation process. A supportive attorney is a major factor in the success of mediation.
- D. Let your client know you will be available for consultation and advice during the mediation process.

VI. WORKING WITH THE CLIENT DURING THE MEDIATION PROCESS

- A. In Ohio, attorneys rarely attend mediations for domestic relations cases and this summary is premised on the assumption that the attorney will not be participating in the actual mediation. However, in other jurisdictions attorneys participate in the actual mediation of domestic relations. Furthermore, in Ohio attorneys usually attend and participate in mediations of tort, contract and general litigation cases in Common Pleas Court and mediations of Federal Court cases. Check local rules and court practices when your case is referred to mediation in other jurisdictions.
- B. Meet with your client or consult by telephone between mediation sessions to discuss what happened in the previous mediation session and to prepare for the next one. Help your client evaluate offers and tentative agreements made in mediation. Discuss the legal and practical consequences of potential agreements. Keep an open mind about ideas that are different than usual Court practice. Sometimes an uncommon but creative agreement is the best solution for a specific case.
- C. For financial matters, review documents produced in mediation and suggest additional documents that the client should request. Have the client ask for the information you usually request in discovery. Help your client organize this information for use in mediation. You will also need this documentation to help your client evaluate proposed agreements.
- D. Encourage the use of experts during the mediation process whenever appropriate. Pensions and businesses need to be evaluated in mediation just as they do in litigation. A child psychologist may offer helpful observations and insights in custody mediations. An accountant or financial advisor can help clients understand the tax consequences of various options and advise them how to maximize tax advantages. Expert fees can often be shared if the parties agree on one expert. Help the client select qualified experts. Decide in advance, with opposing counsel, whether these expert evaluations will be admissible in Court if the mediation is not successful.

- E. Arrange to be available for telephone consultation if your client needs your advice during a specific mediation session.
- F. Attend specific mediation sessions if all parties to the mediation agree that you may be present. To maintain the balance of power, mediators usually want either all of the attorneys or none of the attorneys in a mediation session. Sometimes your availability for advice and feedback during mediation sessions and caucuses can be very helpful to the process.
- G. Have the client sign a release authorizing you to speak with the mediator. Do not, however, send information such as pleadings or proposed agreements to the mediator without prior arrangement. The mediator must maintain neutrality and balance between the parties and will usually not want to receive documents from just one party.
- H. If your client wants to terminate mediation, talk to the mediator about the progress of the mediation. Clients sometimes get discouraged and may not realize how much progress they have made. Most mediators will be candid about their perceptions of the likelihood of reaching agreement and will not continue with futile mediations.
- I. Do not attempt negotiations with other attorney nor file any pleading while the case is in mediation. Your representation of the client at this time should be focused on the mediation process and not on litigation. Many legal proceedings are stayed by the Court during mediation.

VII. THE ROLE OF THE ATTORNEY AFTER MEDIATION

- A. Review all mediated agreements with your client before the agreement is incorporated into an Agreed Entry. Consider the agreement as a whole. Frequently the parties will have agreed to some things that your client could not have obtained in litigation and your client may have given up some things that he/she would likely have received in litigation. Your focus in reviewing the document should be on the overall benefit to your client and your client's satisfaction with the terms of the agreement.
- B. Ask the client why she or he reached a certain agreement. Hear the rationale before evaluating the agreement.
- C. If you have concerns about any part of the agreement, try to suggest specific changes rather than discarding the entire document. Keep in mind that your client has worked hard to reach this agreement, and it may be a delicate balance that could fall apart with even minor adjustments. However, if you feel that specific terms of the agreement are not in your client's best interests, it is important that you advise your client of your concerns.

- D. Be sure the client understands the legal effect of all the provisions in the agreement. Explain any words or concepts that are not familiar to the client.
- E. If you are drafting the Agreed Entry that will incorporate the agreement, be sure to retain both the letter and spirit of the agreement. If the mediator is drafting the agreement, you may request specific language provided both parties are in agreement with the requested language.
- F. As a courtesy, you may want to send the mediator a copy of the final Entry incorporating the mediated agreement. Mediators are often interested in knowing the final outcome of their mediation cases. Additionally, this will assist the mediator if the parties return to the mediator in the future.

SECOND OPTION: COLLABORATIVE LAW:

I. WHAT IS COLLABORATIVE LAW?

A. Definition:

Collaborative law is a model of practicing law whereby both attorneys representing parties to a dispute agree to assist in resolution of conflict through cooperative strategies rather than adversarial techniques and litigation.

B. Principles of Collaborative Law:

The following are the basics tenets of collaborative law.

1. Proactive participation.

This model requires the participation of the parties. The parties must participate in and take responsibility for the legal action and its outcome. The parties must commit to the process and must educate themselves to understand the legal consequences for themselves and the other party.

2. Focusing on interest than position.

Interests are each party's needs, desires, concerns, and fears. Interests motivate people to take positions. A position is likely to be concrete and explicit, whereas the interests underlying it often are unexpressed, intangible, and perhaps even inconsistent. Agreement is often obtainable because interests differ. Shared interests and differing but reconcilable interests can both serve as the basis for enduring agreement.

3. Cooperative resolution of issues.

The parties and their attorneys are committed to a cooperative resolution which each side can accept and support in the long term.

4. Team concept.

The collaborative process requires that the parties and their attorneys work as a team. Other team members may include neutral experts for any issue which requires specific expertise. Legal counsel must model for their clients an attitude of cooperation and respect which sets the tone for positive exchange of information and creative ideas.

C. Role of the Attorney.

The collaborative law model requires the following skills and behaviors on the part of the attorney in order to facilitate a cooperative resolution. The attorney(s)

1. Advises his or her respective client of the application of law to the parties' particular circumstances.
2. Set the stage for a successful outcome by exhibiting commitment to honesty, dignified behavior, and mutual respect.
3. Models for the client the ability to hear and understand (active listening) what is important to the opposing party so that the interests of both parties are identified and promoted. This requires the attorney to represent the client's interest while validating the other party's concerns. The attorney guides the client through the process of cooperative conflict in which disagreement between the parties is used for the productive purpose of finding creative solutions and ultimately cooperative settlement.
4. Strives to bring stability and reason to emotionally charged situations. The attorney uses clear, neutral language in speaking and writing and acts as agent of reality for unreasonable clients.
5. Cooperates with the other to provide all necessary disclosure and discovery and cooperates in setting reasonable deadlines for completion of assignments and tasks.
6. Remains committed to the settlement process and refrains from resorting to threats of litigation.
7. Recommends creative alternatives to assist parties in reaching agreement and overcoming impasses. Such creative alternatives might include: use of neutral experts, use of mediation, use a neutral attorney to provide the parties with another opinion, use of private judging on a limited basis.
8. Refrains from preparing or filing any documents with the court except by mutual agreement of all concerned.

D. Role of the Client.

The parties are required to sign a collaborative law participation agreement which commits the parties to the following.

1. The parties must participate in good faith to reach a negotiated agreement which furthers both parties' interests and addresses both parties' concerns;
2. The parties make full and fair disclosure to their own counsel and the other party of all facts and information pertinent to their legal matter;
3. The parties refrain from asking or expecting their attorneys to advance an unethical or illegal position;
4. The parties refrain from engaging in unnecessary discussions of past events but rather focus upon positive communications designed to settle present legal issues promptly and economically; and
5. In the absence of mutual agreement to the contrary, the parties discuss settlement only in the context of the four-way conference or other sanctioned environment. Settlement issues are not discussed in the presence of the parties' children nor at unannounced times by telephone nor by appearance at the other's residence or place of employment.

E. How Does Collaborative Law Differ from Mediation?

1. A mediator is a neutral individual who helps disputing parties resolve their issues. The mediator is prohibited from giving either party legal advice and from helping either side advocate his or her position. In the event that either side becomes unreasonable or intransigent, lacks negotiating skill, or becomes emotionally distraught, the mediation can quickly become unbalanced. If the mediator tries to deal with the problem, the mediator is often viewed as being biased. If the mediator is unable to correct the problem, the mediation can quickly break down or the agreement that results can be unfair.
2. If the parties are represented by counsel, the legal advice may come after the mediation session and too late to be helpful. Collaborative law allows each party to have quality legal advice and advocacy at all times in the process. If either party lacks negotiating skill or financial understanding or is emotionally upset or angry, the balance is maintained through the presence of skilled advocates. It is the task of the attorney to work with his or her client if the client is being unreasonable to keep the process positive and productive.

F. How Does Collaborative Law Differ from Settlement in Conventional Domestic Practice?

1. Most divorces settle "at the eleventh hour" after expenditure of a great deal of money and after a great deal of emotional damage has been caused. Further, the settlements are usually reached under significant

tension and anxiety and on the brink of trial based upon what the lawyers believe the judge will likely rule. Understandingly, the parties are often ultimately displeased with the results and blame the attorneys.

2. The collaborative law settlement process requires ongoing exchange of information and creative problem solving. Decisions are made with full information and in a far less stressful environment. Because the parties have been involved all the way along, they tend to better understand the options and to ultimately be more supportive of the outcome.

II. WHAT ARE THE ORIGINS OF COLLABORATIVE LAW?

- A. Collaborative law was born out of Minneapolis attorney Stuart Webb's dissatisfaction with the traditional practice of family law in the early 1990s. Webb was convinced that, even if his cases were won, he was not really helping his clients. Litigation forced the parties to take extreme positions and to become intransigent. After a divorce process of months and perhaps years, the husband and wife had dissipated their financial resources, had ruined their children, and hated one another more than ever. This dissatisfaction and "burnout" led Webb to develop a new model of handling cases which required attorneys and clients to work together to resolve domestic disputes without resorting to the litigation process.
- B. Another influential figure in the development of collaborative law has been Pauline Tesler, J.D., of San Francisco, California, who, commencing in 1992, helped to initiate successful collaborative law efforts in the San Francisco area and who has also published widely and hosted a number of informational and training sessions throughout the country.
- C. Since the early 1990s, collaborative law had revolutionized the domestic practice throughout the United States and Canada. Collaborative law groups now exist in at least 18 states and two provinces. Collaborative law is well established in Cincinnati, due in large part to the efforts of John McElwee, J.D., among others, and has been established in the Central Ohio area via the Collaborative Family Law Council of Central Ohio. Ohio collaborative law groups are developing in Akron, Canton, Dayton and perhaps elsewhere.

III. WHICH CLIENTS ARE CANDIDATES FOR COLLABORATIVE LAW?

Pauline Tesler has effectively summarized the client qualities necessary for a successful collaborative law result in her publication entitled "Family Law Advisor, Frequently Asked Questions": While collaborative law is not for every client, those with the following orientation will be well served by the process.

- A. The client prefers a civilized, respectful resolution of domestic issues;
- B. The client wishes to retain the possibility of friendship, or at least positive interaction, with the other party in the future;
- C. The client hopes to successfully co-parent children and desires the best co-parenting relationship possible;

- D. The client wishes to protect the children from the harm associated with protracted and polarizing litigation between the parents;
- E. Both parties have a circle of friends and extended family in common with whom they wish to remain connected;
- F. The clients have ethical or spiritual beliefs that place high value on taking personal responsibility for handling conflicts with integrity;
- G. The client values privacy in his or her personal affairs and does not wish to have details of family restructuring made available on the public record;
- H. The client values control and participatory decision-making and does not want to leave resolution of his or her family matters to a stranger (the judge or magistrate);
- I. The client wishes to identify more creative and individualized options and approaches than those available through traditional litigation; and
- J. The client values relationships in the restructured family situation as much as or more than obtaining the maximum personal financial settlement. The client understands that enduring conflict resolution involves achieving not only his or her own goals but also finding ways to achieve the reasonable goals of the other party.

IV. WHY IS COLLABORATIVE REVOLUTIONIZING DOMESTIC PRACTICE?

- A. Collaborative law allows the attorney to feel better about the process of resolving issues. In comparison to traditional litigation, collaborative law in the domestic realm is quicker, less costly, more creative, more individualized, far less stressful, and far more satisfying in its results.
- B. The collaborative law allows the attorney to work positively with the other attorney. Rather than being “gladiators”, the attorneys become problem-solvers, endeavoring to resolve issues in a manner that maximizes both parties’ interests. Each attorney has incentive to work positively with the other and to thus encourage the clients to trust in their own legal representation.
- C. Collaborative law allows attorneys to practice law in a manner that brings credit to the profession. The attorney must model those qualities that he or she wishes to have the client and other attorney adopt.
- D. Collaborative law makes for better results because the attorneys are able to openly share information and work together toward a well researched, well informed resolution as to issues.
- E. Collaborative law is an ideal model for complex domestic cases in that it affords the opportunity to jointly employ experts who are expected and encouraged to approach issues in a balanced, non-partisan manner.

- F. Collaborative law is less costly to the client in that it provides more efficient use of professional time.
- G. Collaborative law fosters stronger alliance between attorney and client in that the client is involved in his or her representation at every step along the way. The client is thus more inclined to adopt a reasonable, educated positions.
- H. Collaborative law maximizes the resources available to attorneys and clients for a more creative, individualized, successful settlement scheme which will minimize potential for future litigation.

V. WHAT ARE THE ETHICAL CONSIDERATIONS?

- A. A number of collaborative law entities have investigated the ethics of collaborative law. When Stuart Webb formed the Collaborative Law Institute in Minneapolis, he sought an ethics opinion from the Minnesota State Legal Ethics Board and was given the benediction of the Board. Correspondingly, the Collaborative Family Law Council of Central Ohio sought guidance from the Ohio Ethics Board which issued an informal opinion approving collaborative law as an approach so long as the lawyers did not officially call themselves “collaborative lawyers,” which would suggest to the public that some sort of certification was involved. In the event that the client is made fully aware that counsel must withdraw if the case proceeds to litigation, the model presents no ethical problems.
- B. Lawyers are still zealously representing their clients, as required by the Cannon of Ethics, but within a counseling rather than adversarial mode. The attorney never ceases to be an advocate for the client and to protect the client’s rights, but the objective is to work out a mutually satisfactory agreement for both parties.
- C. Some domestic practitioners actually believe that lawyers have an ethical obligation to inform clients about collaborative law as an alternative to classical divorce litigation.

VI. WHAT ARE THE DOWN SIDES OF COLLABORATIVE LAW?

- A. Collaborative law is not ideal for every context, *e.g.*, abuse, bad faith. The parties pledge to disclose all relevant information and to refrain from certain behaviors that are damaging and/or abusive. If the parties can not abide by the terms of the collaborative law contract, they cannot engage successfully in the process.
- B. Some attorneys and clients fear that the collaborative law process, which is based upon good faith, will be misused to take advantage of the other party through failure to disclose assets or other dishonest behavior. Certainly, collaborative law does not guarantee the client that every asset or source of income will be disclosed any more than conventional litigation would. However, the advantage to collaborative law is that the agreement requires the lawyer to withdraw if his or her client is being less than fully honest or participating in the process with less than full good faith. The attorneys have promised in advance to withdraw and to discontinue representation in the event that documents are altered or withheld, the client deliberately delays matters for economic or other gain, the client fails to

keep agreements made during the course of negotiations, and in the event of similar bad faith behavior.

- C. Another concern is that the other party could use the process to “knock the first attorney off the case.” If this is the concern, many attorneys believe that the model can proceed without an executed collaborative law contract.
- D. Another source of concern is that one side could pretend it is interested in collaborative law just long enough to ensure the other side has exhausted all financial resources and thus cannot afford to retain a new lawyer for court. However, experienced collaborative law practitioners believe that such bad faith would be hard to hide during the settlement talks and would result in abrupt termination of the collaborative law process. Further, such behavior would not “play well” when the matter was reviewed by the court. Finally, the same tactics could be utilized in traditional litigation, perhaps more easily. At least the collaborative law process would have presumably produced valuable information which would be used in the litigation process.
- E. One potential challenge of collaborative law is that it requires attorneys to seek new training and to adopt new ways of thinking. It should not be assumed that, just because one is an experienced domestic attorney, one will automatically become a successful collaborative law participant. Training is essential to success in collaborative law.
- F. One concern about collaborative law is that the cases are not scheduled on a court docket and thus may not move along. The attorney does not have the work incentive afforded by judicial supervision. It becomes very important for the attorneys to develop a timeline and to stay on task so that their collaborative cases will move along in a timely manner. Otherwise, court-driven “emergencies” will take precedence on the attorney’s calendar over collaborative law cases.

THIRD OPTION: ARBITRATION OF FAMILY LAW CASES:

I. GENERAL AUTHORITY FOR ARBITRATION IN FAMILY LAW CASES

- A. The Ohio Arbitration Act, R.C. 2711, specifies the types of matters that can be arbitrated and the arbitration procedures.

II. ARBITRATION OF FINANCIAL ISSUES

- B. The Ohio Supreme Court held in Kelm v. Kelm (1993), 68 Ohio St.3d 26 (Kelm I) held that, in a domestic relations case, matters of temporary or permanent spousal and/or child support may, by mutual consent of marriage partners, be made subject to an agreement to arbitrate.

- C. R.C. Title 31 and Civil Rule 75 allow a trial court to intervene and oversee that arbitration of matters of spousal and/or child support is accomplished in an expeditious, efficient and reasonable manner. See Kelm I.

III. ARBITRATION OF CHILDREN'S ISSUES

- A. Matters of child custody and visitation may not be resolved through arbitration. See Kelm v. Kelm (2001), 92 Ohio St.3d 223 (Kelm II). In the Kelm II case, the Court said that arbitration was not appropriate for custody and visitation issues because it encroached upon the trial court's traditional role as *parens patriae*. The Court noted that other states have addressed this issue by making the arbitration decision subject to *de novo* review. However, the Court did not believe this approach advanced the children's best interests nor the basic goals underlying arbitration because it would make the process take longer and frustrate the expectation that arbitration decisions are final.
- B. Some Ohio courts that are considering implementing parenting coordinator programs are concerned about the impact of Kelm II on the arbitration aspect of the parenting coordinator's duties and may be hesitant to begin a parenting coordinator program until the Supreme Court promulgates parenting coordinator rules or clarifies the Kelm II decision with respect to parenting coordinators.

FOURTH OPTION: PARENTING COORDINATION:

I. WHAT IS A PARENTING COORDINATOR?

- A. A new kind of professional role recently implemented in several states including Arizona, California, Colorado, Florida, Georgia, Massachusetts, Oklahoma, Oregon and Vermont. It is an innovative approach that has been increasingly recommended in the professional literature as an intervention for dealing with high conflict and alienating families in domestic relations proceedings before the courts.
- B. The parenting coordination process is child-centered and designed to meet the needs of the individual family and is especially beneficial in very high conflict families.
- C. A parenting coordinator is a neutral third party, usually a therapist or an attorney with mediation and guardian ad litem experience, who assists parents in maintaining, modifying and monitoring compliance with a parenting plan.

II. WHEN IS A PARENTING COORDINATOR USEFUL?

- A. Parenting coordination is most helpful with parents who are not able to use traditional mediation successfully due to high conflict or domestic abuse.
- B. Where parents have great difficulty making mutual and timely decisions and require assistance in coordinating their parenting efforts.
- C. Parenting coordination is especially helpful for parents whose animosity for each other continues long after the divorce and who do not seem to be able to agree on any issues concerning the children. It is very helpful for parents who are locked in immutable impasses and are chronically litigating.
- D. In cases where there are ongoing, but unsubstantiated, allegations of physical or sexual abuse of a child.
- E. Where parents have severe personality disorders or other mental illnesses that interfere with their ability to work with the other parent.
- F. The primary benefit of this program is to reduce the turmoil for the children “caught in the middle” of high conflict divorces.
- G. In jurisdictions who have parenting coordinator programs, the use of parenting coordinators has reduces the number of Court filings by high conflict parents who tend to be litigious.

III. WHAT DOES A PARENTING COORDINATOR DO?

- A. A parenting coordinator uses a combination of mediation and arbitration to resolve disputes between parents.
- B. A parenting coordinator helps families structure, implement and monitor viable parenting plans and reduce re-litigation rates where high conflict threatens the family adjustment process.
- C. After appointment, the parenting coordinator meets with the family members, their attorneys, counselors and other people closely involved with the children to become familiar with the individuals and the issues in the case. Then, as disputes arise, the parents consult with the parenting coordinator. The parenting coordinator first tries to mediate a mutually agreeable solution. If the matter cannot be resolved by mediation, the parenting coordinator makes a decision that will be binding on the parties, subject to review by the Judge or a Magistrate.
- D. The four main parenting coordinator functions include: 1) assessment of the family’s dynamics, the parents’ defenses and flash points, determining the other key player in the conflict, and identifying the couple’s metaphors; 2) education

about child development, parallel parenting techniques to disengage, the legal system, other resources, and may include educating children about strategies for extricating themselves from the middle of their parents' conflict; 3) interfacing with other professionals involved with the family and 4) intervention (mediation and decision making) including problem solving, modeling new behaviors, reframing issues, building empathy.

- E. In most jurisdictions, parenting coordinators are limited to post decree cases after a parenting plan has been fashioned (through mediation, negotiation or Court decision).
- F. The authority of the parenting coordinator is limited to the types of decisions agreed upon, in advance, by the parties and their attorneys. Typically, parenting coordinators are given authority to make decisions on day to day issues such as the interpretation of, and minor adjustments to, the visitation schedule; extra-curricular activity issues; visitation transfer problems; disputes over clothing, toys, feeding, and discipline; communications between a parents and child when the child is with the other parent and communications between the parents. Parenting coordinators are never authorized to decide major issues such as change of custody, change of residential custodian, change of amount of visitation time or removal from the state issues.

IV. HOW ARE PARENTING COORDINATORS APPOINTED?

- A. Appointment of the parenting coordinator is almost always by an agreed court order.
- B. The parties then sign a parenting coordination agreement with the parent coordinator spelling out the details of the services to be provided, responsibilities and compensation.
- C. Parenting coordinators are typically private providers who are paid for their services by the parents pursuant to a parenting coordination agreement.

V. HOW ARE PARENTING COORDINATOR DECISIONS REVIEWED?

- A. Decisions made by parenting coordinators are always subject to de novo judicial review.
- B. The procedure for judicial review is set forth in the parenting coordinator agreement that is signed by the parties and the parenting coordinator. It is also included in the statute or Court rule authorizing the program.
- C. Jurisdictions that have used parenting coordinators for several years have found that judicial review is rarely requested.

VI. STATUS OF PARENTING COORDINATOR PROGRAMS IN OHIO

- A. The Supreme Court of Ohio's Task Force on Family Law and Children recommended that the Supreme Court create a new rule of superintendence to set up a parenting coordinator program and parenting coordinator standards.
- B. The Ohio Supreme Court committee to implement the task force recommendations is in the process of reviewing the parenting coordinator recommendation and the other recommendations made by the task force.
- C. An ad hoc group of attorneys, counselors, mediators and Guardians ad litem in Franklin County, Ohio, are in the process of studying and developing a parenting coordination project using the Ohio arbitration court rules.

THE FOLLOWING SOURCES OF RESEARCH INFORMATION ARE GRATEFULLY ACKNOWLEDGED

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Collaborative Negotiation, Terry Wheeler, Executive Director, Center for Dispute Resolution, Capital University Law School.

Collaborative Law Techniques in Negotiating Domestic Relations Cases, Rosemary G. Rubin, Canton, Ohio.