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I. Introduction

Research indicates that post-divorce parental conflict is the strongest predictor of maladjustment in children. Parental conflict impairs the parent-child relationship and models poor adult coping mechanisms for children. Certainly no loving parent wants these kind of negative outcomes for their children. Many parents, though, become stuck repeating the conflict and dysfunction that led to the end of their romantic relationship.

For parents who continue to experience anger, distrust, or other difficulties in communicating about and cooperating in the care of their children, a parenting coordinator or parenting facilitator may help minimize the children's exposure to harmful parental conflict. This hybrid role combines training from social sciences, child development, mediation, parent education, family law, family systems, and many other fields to address and resolve parental conflict.

The goal of the parenting coordination or parenting facilitation process is to help parents build a healthy, business-like relationship with each other, so that their children are no longer subject to the negative effects of parental conflict. The focus is on the specific needs of the children in the family, rather than generic child development theory.

To achieve these goals and understand what is happening with the children, the parenting coordinator or parenting facilitator may meet with the parents both jointly and individually, and meet with the children (with or without the parents). They should also review reports and other relevant written information, such as child custody evaluations and court orders, and can make home visits, consult with others involved with the family, and request additional information as necessary.

This chapter will address: (1) how both parenting coordination and parenting facilitation can be useful in resolving family law disputes; and (2) encourage attorneys to consider whether one of these ADR services or simply old-fashioned family counseling will most efficiently achieve your clients' goals.

II. The Key Difference Between Parenting Coordination and Parenting Facilitation in Texas

Parenting coordination and parenting facilitation are processes that are still relatively new to many areas of Texas. Parenting coordination was first adopted as law in 2005; parenting facilitation was adopted in 2009, when parenting coordination services also received a substantive revision.

The number one question that plagues these highly similar services is, “Just what is the difference?” The defining difference between these two services is that parenting coordination is confidential, while parenting facilitation is not. This can be confusing given the national discussion where parenting coordination is referred to generically. Many states have called this hybrid ADR service by many different names, since it combines negotiation, education, and skill building. Due to quirks in the Texas naming conventions, the Texas labels may be the most confusing. The easy way to think of these services is that Texas’ parenting coordination is what most other areas refer to as transformative mediation, while Texas’ parenting facilitation is an accountability-driven, co-parenting dispute resolution process.

III. Confidentiality in Parenting Coordination or Parenting Facilitation

Coordinating is confidential under the same provisions as mediation.²

Much like mediators, parenting coordinators cannot be called as witnesses, and cannot provide feedback to the court. This differs from both parenting facilitators and court-appointed counselors (where the traditional patient-therapist privilege does not fully apply in Suits Affecting Parent-Child Relationships).

Parenting facilitators are quite similar to parenting coordinators. The facilitator’s role is non-confidential; they are directed to monitor the family’s compliance with court orders, and assist the parents in acting in the best interests of children.³ Facilitation differs from counseling in this monitoring role as well—ethically, counselors have obligations primarily to the persons they are serving, whereas parenting facilitators are primarily responsible to the court in ensuring (to the extent possible) that parents are acting in the best interests of the children in question. Parenting facilitation has been used

² See TEX. FAM. CODE ANN. § 153.0071(g) (Vernon 2014) (referring to TEX. CIV. PRAC. & REM. CODE ANN. §§ 154.001– 154.073 (West 2011)).

³ TEX. FAM. CODE ANN. §§ 153.6083, 153.6061 (Vernon 2014).

informally in Texas even longer than parenting coordination, although due to the invasive nature of the process, it is intended only for those cases with the highest conflict.

IV. When To Turn to Parenting Coordination?

We sometimes encounter parenting coordinators who are essentially acting as family therapists while taking advantage of the confidentiality provisions of the coordination statute. It's doubtful that this is either appropriate or necessary. Professional practices discourage parents from calling family therapists to testify or provide behavioral recommendations ⁴ to the court. Those practices also recognize that this may be necessary at times to protect the best interests of children. For families in need of more directive, solution-focused conflict resolution, parenting facilitation services would be appropriate.

Parenting facilitation is not magic—problems that often took years to create will not be solved in an hour or two. But parenting facilitation can provide accountability for both parents by monitoring compliance with court orders, and by helping parents resolve disputes over differing expectations.

V. Continuing Parenting Coordination Services or Not?

A unique challenge of coordination services in Texas is how to handle recommendations about the continuation or termination of such services. Obviously when both parents are in agreement, this is an easy decision. But sometimes parents end up in conflict about whether they are even in conflict. In the case of parenting coordinators, any report they make is limited to “a statement of whether the PC should continue.”⁵ Unfortunately, there are many times where some type of services are still necessary, but due to the sabotaging of one party or another, parenting coordination should not continue. In

⁴ Professional ethics for mental health professionals and licensing rules for Texas psychologists note that therapists should not make parenting time (conservatorship/possession/access) recommendations. Professional guidelines instead direct that therapists should focus on the kinds of recommendations their data support in regards to behavioral/mental health issues and needs.

referring a case to parenting coordination, attorneys must be cautious that they are not sending their clients into a black hole, where one of the parents is permitted to act out or continue unhealthy or dangerous behaviors without consequence.

It is imperative that attorneys work closely with their clients to monitor whether parenting coordination is providing the cooperative outcome hoped for, or if a parent needs to remove him or herself from the process and seek a more transparent or accountability-driven service.

VI. When To Turn to Parenting Facilitation?

Parenting facilitation reflects the broader national use of mental health professionals in a hybrid role, also known as Special Masters, Case Managers, or Parenting Coordinators in some jurisdictions. Facilitation is useful for cases where parents may need more directive assistance in disengaging from their disputes with one another, and refocusing on the needs of their children.

Parenting facilitators bring an additional monitoring and reporting role to the process. Facilitators can help inform the court, the parents, and their attorneys what appears to be in the children's best interests, as well as how each parent is contributing to meeting those interests. Parenting facilitation is not magic—problems that often took years to create will not be solved in an hour or two.

Likewise, if a parent expects parenting facilitation to “fix” their co-parent, they are likely to be disappointed in the process. By changing their own approaches to interactions with their former partner, parents can structure better outcomes for their children and themselves. At the same time, parenting facilitation can provide accountability for both parents by monitoring compliance with court orders, and by helping parents resolve disputes over differing expectations.

VII. Post-Decree or Active Litigation Services?

Different stages of legal conflicts have different needs. Prior to a final decree being entered, the work is often about finding common ground and narrowing litigation issues. Post-decree, the focus is often on following through with the court's determinations. In both situations court orders (temporary or

⁵ See FAM. § 153.608 (Vernon 2014).

final) form the floor, or fallback plan, for when parents cannot otherwise agree on co-parenting issues. By committing to learn and practice new techniques for interacting, and doing what each can in reducing co-parenting difficulties, both parents support the long-term wellbeing of their children; they can move forward with healthy, businesslike interactions.

Parenting coordination during active litigation can often serve the same role as mediation in settling a case. It offers a confidential space for parents to focus on their interests, rather than on positional arguing. At the same time, they learn new skills that they can then apply post-decree. Parenting coordination following litigation is highly dependent on parents genuinely wanting to learn how to better co-parent. It can often be useful when parents have significant conflict, but both are well-functioning parents who understand the destructive nature of unresolved conflict on their children.

Parenting facilitation during litigation can serve many of the same roles as parenting coordination, but it trades confidentiality for transparency. This may be helpful when dealing with issues where the parents need verification of each other's actions. Common scenarios that facilitation is useful for include:

- a history of substance abuse, which leaves parents distrustful to the point where they are not able to negotiate without accountability measures;
- a history of safety issues, such as domestic violence;
- complicated behavioral health needs for children or parents where multiple professionals may need a single point of contact to help manage treatment issues; or
- other ongoing monitoring and reporting back to the court would be helpful.

Post-litigation parenting facilitators offer continued accountability, can help prevent interpersonal flare-ups leading to additional litigation, and can serve as a neutral point of reference in those cases where parents fail to resolve their issues and again return to court.

VIII. Examples of Decision Making and “Trigger” Language in Parenting Facilitation Orders

Occasionally, parents identify a need for someone to serve as a tie breaker for them in situations where they cannot resolve an impasse. They simply need a decision from which to move forward.

Less frequently, courts and parents monitor various issues that impact the children, so that automatic consequences (both positive and negative) are triggered based on parents’ actions, without need for further court intervention. While the first goal of parenting facilitation should be to help parents resolve their own issues, additional contributions to timely resolutions, case management, and monitoring can serve a critical role in helping parents reach higher levels of cooperative co-parenting interactions.

A: Decision-Making Language

The parenting facilitation statute does not contemplate that the courts can order parents to a third-party decision maker. However, like in other jurisdictions across the nation, parents can elect to agree to utilize such services.

Since the creation of statutory parenting facilitation in Texas, there have been a number of creative orders that have allowed the parties to agree to some level of decision-making by the facilitator. These issues have ranged from time-sensitive issues regarding registration in extracurricular events, to make-up time for parents who are in reserve military service and unable to exercise their usual parenting time with their children. Below are several examples of language to use as starting points for parents and attorneys to consider when drafting similar agreements.

- **Follow up on recommendations or additional services:**

“The parents agree and it is so ordered that both parents shall comply with any and all recommendations made by the parenting facilitator as to any behavior changes or additional services for themselves or the children deemed necessary by the parenting facilitator.”

- **Exchange location disputes** (particularly an issue for families traveling over summers, or where families travel extensively for exchanges):

“The parents agree and it is so ordered that any disputes between the parties concerning the location for an exchange of possession shall be resolved by the parenting facilitator, whose decision

shall be binding upon both parents and enforced as an order of this court.”

- **Extracurricular activities:**

“The parents agree and it is so ordered that, in the event of a dispute between the parents, the parenting facilitator shall have the authority to make binding decisions about enrolling the children in extracurricular activities, including sports.”

- **Make up for missed parenting time** (due to National Guard drill, business travel, etc.):

“The parents agree and it is so ordered that in the event the [Mother/Father] misses any of their periods of possession of the children because of [CONDITION] then that lost time may be made up as directed by the parenting facilitator.”

- **Picking summer time dates and sharing schedules:**

“It is ordered that the parents meet with the Parenting Facilitator in MONTH of each year for the purpose of scheduling each party’s summer possession of the children. The parents are ordered to attend the MONTH meetings as scheduled by the Parenting Facilitator.”

B: "Trigger" Conditions

One of the fundamental tenets of parenting facilitation is the ability of the facilitator to monitor and report back on the parties’ compliance with court orders. Often when parents are in need of treatment or intervention services, a court is not in a position to efficiently evaluate parental compliance and participation.⁶ These kinds of triggers are often incorporated with a defined set of consequences, such as a stair step increase in parenting time as a parent rectifies deficiencies.

In all of this, the parenting facilitator does not make recommendations regarding possession or access issues, which they are prohibited from doing by statute. Rather, with various consequences already set by the court, the parenting facilitator can report back solely on behavioral progress of the parents. This is more than a fig leaf or a proxy. Mental health professionals focus on assessing what they were trained and licensed to assess: behaviors and interpersonal functioning. Below are several examples:

- **Reporting on basic trigger conditions:**

“The parents agree and it is so ordered that [CHANGE/RESTRICTION/REQUIREMENT] shall continue until such time as the parenting facilitator certifies in writing to both parents and the court that [CONDITION].”

- **A detailed skill-building example:**

“Once Parent A has completed the ‘Bottles and Blocks’ parenting class, providing a certificate of

⁶ There is a difference between attending a service (being a warm body in a seat) and actively participating in services and making the behavioral changes that are needed.

completion to the parenting facilitator, and is able to demonstrate to the parenting facilitator basic infant caregiving skills, Parent A shall have [court's predetermined change in parenting time]."

- **A detailed insight and action-oriented example:**

"Once Parent A is able to demonstrate insight into how their alcoholism has negatively impacted the child in question and is willing and able to express that to the child in a healthy and supportive manner, Parent A shall have [court's predetermined change in parenting time]."

- **Compliance with treatment:**

"Should the parenting facilitator be unable to confirm Parent A is in compliance with their psychiatric treatment plan, Parent A will [return to the prior court ordered access level for # of weeks]. At the end of this time compliance shall be reassessed and Parent A either advanced to [the next level court ordered access] if compliant, or [other consequence], repeating this process until Parent A returns to compliance with their psychiatric treatment plan."

IX. Conclusion

Each individual situation will have highly case-specific issues that will need to be addressed. However, these each can hopefully serve as examples of the parenting facilitator monitoring the fundamental issues of concern, and then reporting back on those issues. While this will obviously come with attendant consequences (positive or negative, based on the parents' actions), those consequences must be predetermined by the court, rather than created ad hoc by the parenting facilitator.