New Jersey Family Lawyer

Volume 30 • Number 5
July 2010

CHAIR'S COLUMN

What Duty Do We Owe the Children?

by Charles F. Vuotto Jr.

Do attorneys owe a duty to the children of the parties they represent in family matters? When we strategize with a father to obtain the lowest child support figure, or to avoid paying arrears, should we consider what is best for the children? When we meet with a mother who wants to limit a father's contact with their children for no reason other than her anger at the break-up, should we consider what is best for the children? When we see a client attempting to use the children as bargaining chips in the divorce, should we consider what is best for the children? Obviously, these are only a few of many examples of situations in which a party's interests or wishes may diverge from the best interests of his or her children. Are we, as family law attorneys, required by rule or case law to consider the best interests of the children and mold our advocacy of the parent accordingly?

Simply put, do we have a duty to the children? I believe the answer to this question should be a resounding "yes." Unfortunately, the law as it exists in New Jersey provides a far less definite answer. Indeed, the problem is twofold: 1) neither the Rules of Professional Conduct (RPCs) nor the remaining Rules of Court directly address the issue of an attorney's duty to a child; and 2) while both the RPCs and the Rules of Court contain their own implications concerning the issue, these implications are inconsistent and unclear.

A plain reading of the RPCs would seem to imply that an attorney representing a parent in matrimonial litigation has no affirmative obligation to a child. The RPCs contain numerous rules addressing an attorney's duty to the client, with the most frequently cited duty of "reasonable diligence and promptness in representing a client."[1] There is no discussion of a duty owed to the client's child. Still, the following question is raised: If an attorney owes a duty of "diligence and promptness in representing a client," does the attorney have an obligation to diligently and promptly represent a client's interest when those interests are adverse to the best interests of the parties' child?[2] (*i.e.,* the client, an unfit parent, wants you to diligently and promptly argue for primary custody of his or her child). Such an obligation to the client, at the expense of the child, can certainly be implied from the RPCs.[3]

While the RPCs appear to imply no duty between an attorney and a child, the Rules of Court appear to imply the opposite. This contrary implication is found in Rule 5:8A, titled "Appointment of Counsel for Child," which directs:

> In all cases where custody or parenting time/visitation is an issue, the court may, on the application of either party or the child or children in a custody or parenting time/visitation dispute, or on its own motion, appoint counsel on behalf of the child or children. Counsel shall be an attorney licensed to practice in the courts of the State of New Jersey and shall serve as the child's lawyer. *The appointment of counsel should occur when the trial court concludes that a child's best interest is not being sufficiently protected by the attorneys for the parties.* (emphasis added).

The implication is clear: If a trial court is required to appoint counsel for a child when it perceives that the child's best interest is not being sufficiently protected "by the attorneys for the parties," then there must be some duty on the part of an attorney to protect that child's interest. The language of the rule clearly implies that lawyers have that duty; otherwise, it would be necessary to appoint an attorney for a child in every custody litigation.

CONTENTS

Based on this, it is evident that the law in New Jersey is unclear regarding whether an attorney has an obligation to the child of the parent he or she represents. No law explicitly establishes such an obligation, and the vague laws that implicitly address the issue fail to be consistent in their meaning and intent.

Still, even without any clear law on the issue, does a moral and professional duty exist on the part of an attorney to protect the best interests of a child? The Academy of Matrimonial Lawyers believes it does. The academy's Bounds of Advocacy, 6.1 through 6.6, specifically address an attorney's obligation to protect the welfare of the client's child, including the requirement of 6.1 that an "attorney representing a parent should consider the welfare of, and seek to minimize the adverse impact of the divorce on, the minor children." I believe that to be a laudable goal.

In an adversarial system that sustains conflict and creates chaos in the lives of families in litigation, attorneys are uniquely positioned to have an impact. We know the most intimate details of our clients' lives: They confide in us; they trust us; they rely on us to advise them and help make decisions that will shape the rest of their lives and the lives of their children. This is not an obligation to be taken lightly, particularly when clients are in distress, and operating out of emotion rather than reason. Whether we acknowledge it or not, we do, in fact, have an impact at virtually every stage of each case, from the initial consultation when we begin framing parenting issues with a client through the drafting of parenting plans, retaining of experts, and generally interacting with our clients about parenting issues. Our impact can fuel the battle, or quell it and provide sound, rational advice and representation. The fact that we have such an impact creates a responsibility that surely implicates the best interests of the children, even if this duty is not clearly set forth by law.

Many attorneys agree we have an obligation, although we may not agree on what that obligation is, or how to balance it with the duty to our clients. We argue for the children's 'best interests.' The experts we retain conduct a 'best interests' evaluation. When making the case for why a client should have custody, or why a particular parenting plan is most appropriate, the attorney's entire presentation is based on the 'best interests' of the child. In arguing for best interests, we have to have some understanding, and some belief, regarding what is, in fact, best for our clients' children. It is difficult to argue a position effectively if we don't believe it, or if it flies in the face of facts that contradict it.

We routinely include language in settlement agreements about "non-disparagement," "co-parenting," and "fostering a positive relationship between the children and the other parent." Some attorneys even include a "Children's Bill of Rights" in the body of their agreements. We do this as a matter of course, even when our clients do not specifically request it. Most clients do not even think of these kinds of provisions, but lawyers

promote and include them.

Should we blindly fight for what our clients want, whether right or wrong? Most attorneys would answer in the negative. We understand that advocacy has limits, and we advise clients against bad decisions. We do not ignore a client when he or she says he or she is willing to take a grossly imbalanced share of assets to his or her clear disadvantage. We do not ignore a client when he or she waives support despite a clear case for substantial alimony. Instead, we counsel these clients, attempt to educate them about their rights, and urge them to reconsider in their best interests. Surely, we have at least that same obligation when a parent takes a position with respect to custody or parenting that is likely to be damaging to his or her child. The 'wishes' of the client in the heat of a bitter divorce can be destructive; motivated by anger, revenge, fear, and misunderstanding. If a parent's actions are damaging a child, in the end that is not only bad for the child, but bad for the parent and society as a whole.

The impact we have is not just on the final outcome. For example, when clients complain that children are depressed, or are acting out, or are having difficulty after seeing the other parent, they often conclude that the reason is due to some inappropriate behavior on the part of the other parent. If we know anything about children and divorce, we know that the simple act of a child transitioning between parents triggers reactions, such as regression, aggression, sadness or depression. Children have these reactions even where the other parent is a model parent. In fact, the better the visit the more difficult the transition might be. If we understand this, don't we have a duty to explain it to our clients, or to suggest that our clients seek therapeutic help or coaching so they better understand the needs of their children?

In the course of a typical contested case, we receive many complaints that a parent is acting inappropriately with respect to the children. The problem might involve talking about the divorce in front of the children, difficulties with transitions between households, restricting parental access, disparaging a parent, or encouraging a child to disrespect a parent. We react to protect our client, but we are also exercising discretion and common sense, relying on our experience to counsel or 'coach' clients to do the right thing when it comes to the children.

Each time we receive complaints like these from our clients, we have a choice about how we respond. We can write accusatory letters, threatening motions and reprisals, or we can step back and ask the client questions to better understand the circumstances. Maybe the other parent acted inappropriately, maybe not. Whatever the case, we can seek ways to constructively deal with the issue, or we can attack and seek to punish the offender. In that moment, we can choose whether to respond in a way that is likely to sustain conflict and chaos (which we all agree is contrary to the best interests of the children), or to work with the client and opposing counsel to help the parent, the child and the family as a whole.

I do not believe that lawyers are simply hired guns, blindly promoting our clients' agendas. Despite the anger of the moment, parents need to find a way to deal with one another, and co-parent their children in the years after the litigation. Lawyers have an affirmative responsibility to actively encourage clients to be responsible parents and to act in their children's best interests from retention to final judgment. We may not always know what that is, but we certainly can spot conduct that is contrary to a child's best interests and advise our clients accordingly.

The duty of an attorney to a child, a duty that so many lawyers already recognize, should be clarified and embodied within the law. This will undoubtedly involve discussion and debate, and hopefully result in reforming our laws to not only eliminate the apparent inconsistencies between the RPCs and the Rules of Court, but to specifically address an attorney's duty to the child of a client in family litigation. ■

ENDNOTES

1. RPC 1.3.
2. Courts in other states have confirmed that an attorney has no obligation to protect the interests of a nonclient child. *See Rhode v. Adams,* 957 P.2d 1124, 1128 (Mont. 1998) ("We therefore conclude that because the interests of a parent and those of a child in a child custody case may not be identical, the attorney's duty runs solely to his or her client…"); *Lamare v. Basbanes,* 636 N.E.2d 218, 219 (Mass. 1994) (However, the court will not impose a duty of reasonable care [for a child] on an attorney if such an independent duty would potentially conflict with the duty the attorney owes to his or her client."); *Strait v. Kennedy,* 13 P.3d 671, 677 (Wash. Ct. App. 2000) ("[T]o conclude that [an attorney for a parent] owed a duty to the [client's] daughters would create a conflict-of-interest situation, not only in this case but in other cases for which this case will set precedent.").
3. *See also* Andrew Schepard, "Protecting Children. Divorce Lawyer's Professional Responsibility Obligations to Children," 185 *N.J.L.J.* 620 (Aug. 14, 2006) (noting that the Model Rules of Professional Conduct impose no duty between an attorney and the client's child).

The author wishes to thank Lisa Steirman Harvey, of counsel with Tonneman, Vuotto & Enis, LLC, and Amy Wechsler, of Copeland, Shimalla, Wechsler & Lepp, for assisting with this column.

A Not-So-Subtle Reminder To All NJSBA Members:

You Have FREE Access To The Most Intuitive Online Legal Research In The Country - Today.

Log on to the New Jersey State Bar Association website at www.njsba.com and gain access to Fastcase's comprehensive online legal library for free. NJSBA members can now save thousands of dollars on legal research costs by using Fastcase.

Watch for free training webinars.
For customer support, call
866-77-FASTCASE (866-773-2782)

Free to NJSBA Members:

- U.S. Supreme Court Cases
- New Jersey Supreme Court Cases
- New Jersey Appellate Division Cases
- New Jersey Superior Court Cases
- Federal Court of Appeals for the Third Circuit
- New Jersey Codes and Rules
- Unlimited dual-column printing
- Authority Check for related cases

NJSBA Members can also upgrade to the Fastcase Premium Plan for $195 per year and receive:

- Supreme Court cases for all 50 states
- Court of appeals cases for all 50 states
- All Federal Circuit Courts
- All Federal District Courts
- All Bankruptcy Courts
- Tax Court Memorandum Decisions
- Additional Federal databases
- 50-state and federal statutes, regulations, court rules and constitutions

fastcase®
Accelerated legal research.

NEW JERSEY STATE BAR ASSOCIATION 1899

Fastcase is a member benefit of the New Jersey State Bar Association.

EDITOR'S COLUMN

Emergent Applications

by William M. Schreiber

This issue of the *New Jersey Family Lawyer* addresses some child-related issues. One of the concerns that arises in many families, both pre-divorce and post-divorce, deals with emergent applications concerning children. If an appeal is pending, the question arises regarding where an emergent application concerning custody and parenting time of children should be made. For many years, it was believed that Rule 2:9-1(a), Control Prior to Appellate Disposition, prevented any applications to the trial court, even those dealing with emergent applications concerning children and their health and safety. Given that fact, an application would have to be made to the New Jersey Superior Court, Appellate Division, by way of emergent notice of motion. Unfortunately, because the Appellate Division does not have regularly scheduled motion days, and it is unusual for the court to entertain orders to show cause, the practitioner is left in a difficult position when counseling a client on how to protect his or her children from harm while an appeal is pending.

The dilemma was resolved in the case of *Carlucci v. Carlucci*,[1] when Judge George L. Seltzer addressed the problem. Unfortunately for the family lawyer, this case is not even noted in the comments to the rule in the annotated version of the New Jersey Rules of Court. Therefore, an analysis of the opinion of Judge Seltzer is worthwhile, if only to highlight the issue and permit the practitioner to deal with any jurisdictional issues raised by a trial court when presenting an order to show cause to protect children, while an appeal is pending.

Rule 2:9-1(a) reads, in relevant part:

> Control Prior to Appellate Disposition. Except as otherwise provided by R. 2:9-3, 2:9-4(bail), 2:9-5 (stay pending appeal), 2:9-7 and 3:21-10(d), the supervision and control of the proceedings on appeal or certification shall be in the appellate court from the time the appeal is taken or the notice of petition for certification filed. The trial court, however, shall have continuing jurisdiction to enforce judgments and orders pursuant to R. 1:10 and as otherwise provided. The appellate court may at any time entertain a motion for directions to the court or courts or agencies below or to modify or vacate any order made by such courts or agencies or by any judge below.

Judge Seltzer, in *Carlucci,* noted the ambiguity of the term "proceedings on appeal," and suggests that for purposes of the rule, the appeal divests the trial court of jurisdiction on issues that arose at the trial court. The opinion holds that the trial court does not lose jurisdiction to deal with "collateral issues." Prior trial court decisions were reviewed, and it was noted that contrary conclusions were reached. In *Morrison v. Morrison*,[2] the court determined that an appeal did not divest jurisdiction to hear "collateral" matters that were "independent" of the subject matter of the appeal. In *D'Atria v. D'Atria*,[3] the trial court held that "comity" required the trial court defer action to the Appellate Division.

In *Carlucci,* the court analyzed the reason for the rule. The logic of the rule is that if an application to the trial court seeks to modify the prior order or judgment, then jurisdiction is preempted by the Appellate Division. However, if the issues raised are a "new case," then there is no reason why the trial court should not entertain the application. Except for the fact that there is not a new docket number, the issues raised are distinct, and can be appropriately dealt with in the trial court. The *Carlucci* court also recognized that in the family part the same docket number is retained for numerous separate issues with lengthy intervals in between subsequent court applications.

Therefore, when faced with an emergent situation, particularly concerning the health and safety of children, an application can and should be made to the trial court by way of order to show cause or otherwise, even when an appeal is pending on other issues. This should remind practitioners that the court is there to protect children and the Rules of Court should be implemented in a way to permit the court to do so. ■

ENDNOTES

1. *Carlucci v. Carlucci*, 265 N.J. Super. 333 (Ch. Div. 1993).
2. *Morrison v. Morrison*, 93 N.J. Super 96 (Ch. Div. 1996).
3. *D'Atria v. D'Atria*, 242 N.J. Super. 392 (Ch. Div. 1990).

EDITOR-IN-CHIEF COLUMN

The Times, They Are A-Changing

by Mark H. Sobel

The editorial board of the *New Jersey Family Lawyer* is pleased to announce that Charles F. Vuotto Jr. has been selected as the new editor-in-chief, and that Brian M. Schwartz has been selected as the executive editor of this vibrant voice for New Jersey's family lawyers. Both Chuck and Brian have worked tirelessly over the past decade as vital members of the editorial board. They have provided countless hours of effort and valuable assistance to participants writing for our periodical. They have earned their place in the new leadership of the *New Jersey Family Lawyer*.

Chuck is the recent chair of the executive committee of the Family Law Section of the New Jersey State Bar Association, now holding the most desired title of immediate past-chair. All of us who know Chuck realize that he is not one to rest on his laurels. Having accomplished so much during his year as chair, he now takes over as the editor-in-chief of the *New Jersey Family Lawyer*, a daunting task, as I well know. Chuck is both up to this task and, I am sure, will continue the fine tradition of the *New Jersey Family Lawyer*.

Brian is a current officer of the executive committee of the Family Section of the New Jersey State Bar Association, and, with Chuck, will form an enthusiastic and energetic team to guide the *New Jersey Family Lawyer*. Brian's devotion to this periodical, and his ability to not only maintain the quality of work contained herein, but also to give voice to new and creative ideas, will help maintain the vital role of the *New Jersey Family Lawyer* in our state.

Both Chuck and Brian will effectively lead this periodical in the years to come. They have already started to generate the enthusiasm, which they have shown throughout their tenure as members of the editorial board, and have embarked upon a pattern of growth by way of the expansion of the editorial board and a commitment to excellence that will be seen in the upcoming future issues.

Lee Hymerling, the editor-in-chief *emeritus*, joins with me in congratulating both Chuck and Brian on their well-deserved recognition, and in wishing them much success in this new endeavor. I have had the privilege of being a member of the editorial board for over 20 years. I have served as the editor-in-chief of the *New Jersey Family Lawyer* for over 10 years. During that time there have been countless people upon whom I have heavily relied to make this publication one of the best periodicals the New Jersey State Bar Association has published.

While space does not permit me to individually thank all of these hard-working, unpaid 'volunteers,' I would be remiss if I did not at least thank two of the most important people during my tenure. The first is Cheryl Baisden, who single-handedly reviews not only this publication, but all the publications of the New Jersey State Bar Association. Her efforts year in and year out are known primarily by the editorial board, but deserve wider recognition for her steadfast support of this publication. She seemingly never has had any set hours, because she is always available to assist us, and I am sure both Chuck and Brian will lean heavily upon her in the years to come. I thank her for all of her efforts over the many years in which she has assisted this publication.

Last, but certainly not least, is my former partner, the Honorable Margaret (Maggie) Goodzeit. For years she worked with me editing every column and every article in every publication. I could not possibly have kept the high standard we have set for the *New Jersey Family Lawyer* regarding both the scope of its content and depth of its analysis, without Judge Goodzeit's careful, considerate and compassionate editing. Her assistance to the *New Jersey Family Lawyer* was one of the primary factors for maintaining this publication at the high level throughout the many years during which I was the editor-in-chief. I thank Judge Goodzeit publicly for her efforts and accomplishments as a vital member of the editorial board for many, many years.

Throughout the years I have had the privilege of writing the editor-in-chief's column. These columns have, in part, tracked my public and private life. Thus, during my family's evolution I have written about the necessity of including camp expenses on case information statements, the age of consent for cell phone usage and the precious balance between work and family. I

Continued on page 18

EXPERIENCE INTEGRITY EXCELLENCE

FOR YOUR PRACTICE

Lawyers Professional Liability

Business Office Package

Workers' Compensation

Employment Practices Liability

FOR YOU

Life & Disability Insurance

Long-Term Care

Auto & Home

FOR YOUR EMPLOYEES

Medical & Prescription Drug

Dental & Vision

Group Life & Disability Insurance

To learn more call USI Affinity at (800) 727.2525

Also visit Membership Info at www.njsba.com

USI AFFINITY IS THE NEW EXCLUSIVE PROVIDER OF MEMBER INSURANCE PROGRAMS FOR THE NEW JERSEY STATE BAR ASSOCIATION.

For more than 50 years, customer satisfaction and long-term relationships have been the USI Affinity hallmarks of success. And moving forward, we are proud to be the NJSBA's trusted source for all your insurance needs.

USI AFFINITY

NEW JERSEY STATE BAR ASSOCIATION 1899

Parent Alienation Syndrome

A Practical Approach From a Psychological Perspective for Matrimonial Lawyers

by Robert Rosenbaum

Parental alienation (PA) and the resulting parent alienation syndrome (PAS) remains a hotly debated and controversial topic in both the legal and psychological communities. In fact, there are some professionals who don't even believe that PA or PAS exists. However, PA and PAS are often cited with respect to custody issues.

Proponents of PA and PAS state that both can be easily observed, are already reported in best interest custody/parenting time evaluations, and often form the basis of a number of reported custody determinations.[1] Detractors point to the fact that PAS is not well defined, does not fully meet admissibility standards,[2] and has not been adequately documented by research.[3]

Obviously, matrimonial lawyers increasingly need to know about PAS, be able to determine the orientation of potential experts with respect to their case, and have the knowledge to effectively cross examine appointed or retained experts.

Thus, the purpose of this article is to: 1) provide attorneys with a basic understanding of psychological background and current controversy concerning PA and PAS, and 2) provide a basis for dealing with cases involving PA and PAS.

THE THEORY OF PAS

By way of background, the concept of parent alienation syndrome (PAS) is attributed to Dr. Richard Gardner, and describes a psychological disorder that arises *in the child* based upon parent alienation (PA) or alienating behaviors by one of the parents in the context of a high-conflict custody dispute.[4] Specifically, PAS is a "syndrome within the child who comes to believe that the targeted parent is someone unworthy of having a relationship based upon the behavior of the alienating parent."[5]

PAS is a "syndrome within the child who comes to believe that the targeted parent is someone unworthy of having a relationship based upon the behavior of the alienating parent."–Gardner

Gardner goes on to state that PAS may be present when the child: 1) had a good relationship with the targeted parent prior to the custody litigation, and 2) reacts differently and often vilifies the targeted parent during custody litigation.

Gardner,[6] and subsequently Dr. Amy Baker,[7] postulated that PAS is often evidenced by eight typical symptoms found in the child. Typical symptoms of PAS can include:

1. a campaign of denigration where everything that the targeted parent does is incorrect and the child claims they were never close to the targeted parent
2. a weak, frivolous, and absurd basis for the denigration
3. a complete lack of ambivalence where everything the targeted parent does is wrong and everything the alienating parent does is right
4. the child stating that the alienating parent has nothing to do with their decisions, feelings, etc.
5. complete support for the alienating parent
6. lack of guilt, where the child does not believe the alienating parent or they are doing anything questionable
7. presence of borrowed scenarios, fragmented memories, or enhanced recollections, and
8. rejection of the extended family of the targeted parent

However, it is important to note that the presence of the eight PAS symptoms may vary from case to case.[8] In some cases, a few symptoms may be present and be rather transitory,whereas in other cases the symptoms may be numerous and profound. Additionally, the intensity of the eight PAS symptoms may vary from rather mild to profound.

Furthermore, Dr. Richard Warshak[9] notes that PAS may not exist in cases where the child's rejecting

expressions: 1) are temporary and short term, rather than chronic, 2) are occasional rather than frequent, 3) occur only in certain situations, 4) co-exist with expressions of love and affection, and 5) are directed at both parents.

Similarly, almost all theoreticians and researchers, including Gardner[10] and Baker,[11] agree it is essential to differentiate between cases of true PAS and where the child has been abused or misused by the rejected parent. A differential diagnosis regarding the presence of abusive behavior on the part of the rejected parent in terms of psychological maltreatment, neglect, physical or sexual abuse, or domestic violence is thus required.

MIXED SUPPORT FOR PAS

Since Gardner first introduced the notion of PAS, there has been widespread controversy. Often, the heated debate has revolved around questions concerning: 1) historic issues, 2) the theoretical construct, 3) measurement and validity, 4) alternative explanations, and 5) practical limitations.

Historic Questions

With respect to historic issues, most revolve around publication and validity. Gardner initially self-published his doctrine of PAS. Furthermore, he did not initially subject his theory of PAS to rigorous peer review or empirical validation. Thus, the specter of financial interests and self-promotion still abound[12] among detractors.

However, supporters of PAS point out that despite initial lack of peer review and empirical support, PAS may be a valid concept that has recently undergone more rigorous peer review and attempts at validation. Supporters of PAS draw the analogy to the heliocentric theories of Copernicus, who postulated that the earth revolves around the sun and self-published the same in *De Revolutionibus Orbium Coelestium*. They point to the fact that Copernicus did not subject his idea to peer review or empirical validation. However, recent research has generally tended to support his notion!

Theoretical Construct Questions

With respect to ongoing questions concerning the theoretical construct detractors point to the fact that PAS is not listed in the current Diagnostic and Statistical Manual of Mental Disorders[13] (DSM), which is commonly used for the diagnosis and treatment of psychological/psychiatric problems.

Furthermore, detractors state that the notion of PA as a syndrome is a misnomer because a syndrome by definition is a group of symptoms associated with a malady that is created *and* found in the same individual. However, parent alienation is created by behaviors that occur outside of the individual (*i.e.*, alienation is created by the parent but expressed in the child). Thus, they question if PAS can be a true syndrome because the malady is not created *and* found in the same individual.

Supporters of PAS point out that these two criticisms (*i.e.*, presence in the DSM and nomenclature) are rather superficial. They point to the fact that the DSM is a reference guide and not research validated. Rather, the DSM is largely a guide for insurance reimbursement and treatment. As such, the presence or absence of a diagnosis or syndrome such as PAS is not indicative of a syndrome's validity,[14] and should have no bearing on the court.

Furthermore, they point out that the use of the word "syndrome" has a different meaning when used in context within the legal community. For example, lawyers and psychologists may use the phrase "battered spouse syndrome," where the *locus* of the creation (*i.e.*, the batterer) is different than the victim (*i.e.*, the spouse).

Furthermore, supporters of PAS point to the fact that the use of the word "syndrome" does not negate more precise psychological diagnosis that can be used, such as post-traumatic stress disorder, in the case of the battered spouse or adjustment disorder in cases involving PAS.

Measurement Questions

Two of the most vexing problems concerning PAS deal with empirical validation and measurement.

Detractors of the notion of PAS point to the fact that there is a lack of consistent empirical validation concerning the basic theory of PAS.[15] For example, some studies indicate that poor parenting behaviors of *both* parents, as well as vulnerability within the child, contributed to the symptoms of PAS within the child.[16]

Similarly, in addition to the general theory, detractors point to the fact that there are no widely accepted or validated objective psychometric instruments that reliably and consistently actually measure PAS in the child or PA on the part of the parent.

In contrast, supporters of the notion of PAS point to other data that supports the notion of PAS. For example, Baker has shown convincing empirical evidence to support the construct validity of the eight symptoms of PAS.[17]

Similarly, Dr. Carlos A. Rueda[18] has shown a high degree of inter-rater reliability concerning PAS that can be interpreted to indicate that professionals are able to consistently identify symptoms of PAS. This would support the notion that PAS is a valid concept. To paraphrase Justice Potter Stewart's remark, "I'm not sure what pornography (or PA) is, but I do know it when I see it."

Some supporters have also adapted their evaluations to avoid psychometric criticism[19] and legal questioning in regards to PAS. Instead of supporting the general notion of PAS as a syndrome, some psychologists cite: 1) individual examples of alienating behavior on the part of the parent and the child's related statements/behaviors,

and 2) related case data including the parents underlying personality characteristics as measured on the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). Thus, they are able to ascribe the behavior of the parent to an underlying personality issue without needing to address the issue of PAS.

IMPLICATIONS FOR MATRIMONIAL ATTORNEYS

From a psychological perspective, the notion of PAS and PA presents many practical challenges for the attorney who practices matrimonial law.

First, psychologists are not uniform in their interpretation or support of PA and PAS. Some steadfastly believe that PA and PAS exists, while others do not. This conflict is often fueled by the extreme voices of defenders and detractors who advocate for their position with more enthusiasm than reason or research.

Regardless, this lack of uniformity and objective psychometric measurement gives rise to questions of an evidentiary nature[20] based upon the *Daubert*[21] standard and the *Frye*[22] standard.

As a result of these strident voices and evidentiary questions, there appears to be a growing number of psychologists who support a movement away from the terms PA and PAS as a specific syndrome toward the identification of specific "alienating behaviors" on the part of the parents.[23] These psychologists often take into account: 1) alternative explanations for the child's behavior, 2) reasons for the alleged alienating behaviors in the larger context of the case, 3) situational factors such as abuse, and 4) the impact of the parents' underlying personality. These psychologists also support the need for ongoing research in the field and appear less dogmatic in their approach[24]

Second, an attorney involved in a case where there are allegations that involve PAS or PA will want to ascertain the orientation of any current or future expert because it will have direct bearing upon the case. Specifically, the expert's orientation will logically have significant ramifications because it will impact on the lens through which they view the case and write the report.

Similarly, attorneys need to explicitly identify the expert's bias and orientation because it will likely affect the parties' choices during the litigation, the parties' psychological resolution of the case, and parties' ability to deal with custody arrangements in a forthright fashion.

Furthermore, if the case goes to trial, the attorney may want to make any expert's orientation clear through the *voir dire* to increase the judge's understanding of the case. Specifically, the attorney may want to elucidate the expert's potential bias, basis, and limits to their conclusions. Any expert should be able to perform this task as specified by the *Specialty Guidelines for Psychologists Custody/ Visitation Evaluations.*

Third, regardless of the psychologist's orientation toward PA and PAS, it is important that: 1) the psychologist is trained and experienced in evaluating children, and 2) they avoid multiple examinations of the child(ren).[25] Although a criminal case, attorneys only need to reflect back on the 1985 tragic case of Wee Tot Daycare Center and Margaret Kelly Michaels to appreciate this conclusion.

Fourth, attorneys can directly affect the parties' ability to comply with the parenting plan on a post-judgment basis. Although psychological research overwhelmingly shows that children do best with maximum exposure to both parents,[26] any matrimonial attorney knows that parents' later behavior is not always supportive of maximum exposure. Therefore, on a logical basis, an attorney's ability to provide and support a highly specified parenting plan might preemptively reduce alienating/non-supportive behaviors.

Fifth, in cases where alienating/non-supportive behaviors are suspected, it is in the children's psychological interest that a *pendete lite* parenting plan be established to deal with ongoing conflict and alienating behaviors as early as possible. This conclusion is based upon the fact that research clearly and consistently indicates that ongoing conflict between the parties is detrimental to the long-term psychological adjustment of the child.[27]

Finally, in cases where there is ongoing alienation, reunification therapy appears to be of benefit.[28] However, it should be noted that reunification therapy is different than parenting coordination. Parenting coordination (which requires a separate article) often has a broader focus than reunification therapy that strictly focuses on attempting to heal the relationship between the parent(s) and child(ren).

Thus, the issues of parent alienation and parent alienation syndrome remain controversial. While psychologists look to validate and elucidate the concept, attorneys need to be aware that PA and PAS may not necessarily meet strict evidentiary standards. Attorneys may also wish to assist their clients through proactive choice of experts and careful questioning through the *voir dire.* Similarly, when non-supportive behavior is suspected (as opposed to PA or PAS) a highly specified parenting plan or reunification therapy may be needed. ■

ENDNOTES

1. Novotney, A. (2009). Upfront. *Monitor on Psychology*, 44 (4), 12. Bala, N., Hunt, S., McCarney, C. (2010). Parent alienation: Canadian court cases 1989-2008. *Family Court Review,* 48 (1), 164-179.
2. Bow, J.N., Gould, J.W., Flens, J.R. (2009). Examining parental alienation in child custody cases: A survey of mental health and legal professionals. *American Journal of Family Thera-*

py, 37 (2), 127-145.
3. Bond, R. (2008). The lingering debate over the parental alienation syndrome phenomenon. *Journal of Child Custody*, 4 (1-2), 37-54.
4. Gardner, R. A. (1985). Recent trends in divorce and custody litigation. *Academy Forum,* 29 (20), 3-7. Gardner, R. A. (1987). Judges interviewing children in custody/visitation litigation. *New Jersey Lawyer,* 7 (2), 26. Gardner, R. A. (1998). The parental alienation syndrome, 2nd Ed.: Cresskill, NJ: Creative Therapeutics.
5. Baker, A.J. (2007). Adult children of parental alienation syndrome: Breaking the ties that bind: New York, NY: Norton & Co.
6. Gardner, R. A. (1987). Judges interviewing children in custody/visitation litigation. *New Jersey Lawyer,* 7 (2), 26.
7. Baker, A.J. (2007). Adult children of parental alienation syndrome: Breaking the ties that bind: New York, NY: Norton & Co.
8. Warshak, R. A. (2002). Misdiagnosis of parental alienation syndrome. *American Journal of Forensic Psychology*, *20* (2), 31-52.
9. Warshak, R. A. (2002). Misdiagnosis of parental alienation syndrome. *American Journal of Forensic Psychology*, *20* (2), 31-52.
10. Gardner, R. A. (2002). Parental alienation syndrome vs. parental alienation: Which diagnosis should evaluators use in child-custody disputes? *The American Journal of Family Therapy*, 30, 93-115.
11. Baker, A.J. (2007). Adult children of parental alienation syndrome: Breaking the ties that bind: New York, NY: Norton & Co.
12. Diagnostic and Statistical Manual of Mental Disorders, 4th Ed. (1994). Washington, D.C.: American Psychiatric Association.
13. Diagnostic and Statistical Manual of Mental Disorders, 4th Ed. (1994). Washington, D.C.: American Psychiatric Association.
14. Baker, Amy J. (2009) Understanding Parental Alienation in Divorce: A Guide for Family Law Attorney's & Judges, Seminar Material: New Brunswick, N.J.: Jersey Institute for Continuing Legal Education.
15. Ackerman, M., Kane, A. (2007) Psychological Experts in divorce actions: New York, NY: Aspen Publishers.
16. Flens, J., Drozd, L., Eds. (2005) Psychological Testing in Child Custody Evaluations: New York, NY: Haworth Press.
17. Baker, A., Darnall, D. (2007). A construct study of the eight symptoms of severe parental alienation syndrome: A survey of parental experiences. *Journal of Divorce & Remarriage*. 47(1-2), 55-75.
18. Rueda, C. (2004). Parental alienation syndrome: An inter-rater reliability study. Dissertation Abstracts International: Section B: The Sciences and Engineering. 64(12-B), pp. 6380.
19. Ceci, S., Hembrooke, H., Eds. (2001). Expert witnesses in Child Abuses Cases, 2nd Ed: Washington, DC: American Psychological Association.
20. Bond, R. (2008). The lingering debate over the parental alienation syndrome phenomenon. *Journal of Child Custody*, 4 (1-2), 37-54.
21. *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993).
22. *Frye v. U.S.*, 293 F. 1013 (D.C. Cir. 1923).
23. Darnall, D., Steinberg, B. (2008). Motivational models for spontaneous reunification with the alienated child: Part I. *American Journal of Family Therapy,* 36(2), 107-115.
24. Bond, R. (2008). The lingering debate over the parental alienation syndrome phenomenon. *Journal of Child Custody*, 4 (1-2), 37-54.
25. Ceci, S., Hembrooke, H., Eds. (2001). Expert witnesses in Child Abuses Cases, 2nd Ed: Washington, DC: American Psychological Association.
26. Deutch, R. (2008) Proceedings of the 45th Annual Association of Family and Conciliation Courts Proceedings: Vancouver, BC.: Association of Family and Conciliation Courts.
27. Deutch, R. (2008) Proceedings of the 45th Annual Association of Family and Conciliation Courts Proceedings: Vancouver, BC.: Association of Family and Conciliation Courts.
28. Stahl, P. (1999). Complex issues in child custody evaluations: Thousand Oaks, CA: Sage Publications.

Robert Rosenbaum *is the director of Bunker Hill Consultation Center in Princeton. He is a licensed psychologist in New Jersey and Hawaii who has been appointed by the Court numerous times to provide custody evaluations, serve as an expert witness, and perform reunification therapy and parenting coordination.*

The Role of the Parenting Coordinator

by Linda A. Schofel

Parenting coordination is a child-focused alternative dispute resolution process in which a qualified impartial person with mediation training and experience assists high-conflict parents to implement their parenting plan. Parenting coordination is a response to the substantial number of children caught in the middle of custody disputes and post-divorce litigation.[1] According to the Association of Family and Conciliation Courts (AFCC) Task Force on Parent Coordination (2002), "[p]arent coordination is an innovative approach which has been repeatedly recommended in the professional literature as a means to deal with high conflict and alienating families in domestic relations proceedings before the Court."[2]

A number of states are defining the role of parenting coordinator in their statutes. In March 2007, the Supreme Court of New Jersey approved the operational details of a parenting coordinator pilot program for implementation in four vicinages—Bergen, Middlesex, Morris/Sussex and Union counties. As described in the overview section of the program standards, as set forth by the Administrative Office of the Courts:

> [a] Parenting Coordinator is a qualified neutral person appointed by the court, or agreed to by the parties, to facilitate the resolution of day-to-day parenting issues that frequently arise within the context of family life when parents are separated. The courts may appoint a Parenting Coordinator at any time during a case involving minor children after a parenting plan has been established when the parties cannot resolve these issues on their own. The Parenting Coordinator's goal is to aid parties in monitoring the existing parenting plan, reducing misunderstandings, clarifying priorities, exploring possibilities for compromises and developing methods of communication that promote corroboration in parenting. The Parenting Coordinator's role is to facilitate decision making between the parties or make such recommendations, as may be appropriate, when the parties are unable to do so. One primary goal of the Parenting Coordinator is to empower parents to develop and utilize effective parenting skills so that they can resume the parenting and decision making role without the need for outside intervention. The Parenting Coordinator should provide guidance and direction to the parties with the primary focus on the best interests of the child by reducing conflict and fostering sound decisions that aid positive child development.[3]

Parenting coordinators are viewed as being in a unique position to help the overburdened legal system deal with the needs of high-conflict families in ways that judges, attorneys, guardian *ad litem*s (assuming they are attorneys) and psychotherapists cannot.

Parenting coordinators are viewed as being in a unique position to help the overburdened legal system deal with the needs of high-conflict families in ways that judges, attorneys, guardian *ad litems* (assuming they are attorneys) and psychotherapists cannot. What is unique about parenting coordinators is that they are given a certain amount of decision-making authority; they have access to the families; and they possess the therapeutic skills and expertise to promote behavioral change in the parents for the best interests of their children.[4] The chart on the following page demonstrates the unique position parenting coordinators have in comparison to judges, attorneys, guardian *ad litems* (who are attorneys) and psychotherapists.[5]

Two pioneers in the parenting coordination movement have been Carla Garrity and Mitch Baris, who wrote the first book on parenting coordination, titled *Caught in the Middle: Protecting the Children of High Conflict Divorce* (1994).[7] According to Garrity and Baris, a parenting coordinator is a professional who has a unique background in both family law and psychotherapy. It is generally agreed by experienced parenting coordinators that those who fulfill this role most effectively with high-conflict families are either forensic mental health practitioners (psychologists or social workers) or attorneys with a mental health background, so long as the professional has mediation and parenting coordination training. Parenting coordination is a quasi-legal, mental health alternative dispute resolution process that

PROFESSIONAL	AUTHORITY	ACCESS	CLINICAL SKILLS
Judge	Yes	?	No*
Attorney	No	No	No
Guardian *ad Litem*	Some	Yes	No**
Psychotherapist	No***	?	Yes
Parenting Coordinator	Some	Yes	Yes****

* A judge may have clinical expertise, though it is not required

** Assuming the professional does possess a mental health background, then he or she would possess clinical skills.

*** Psychotherapists may have some authority if agreed to by the parties.

**** Assuming the parenting coordinator is a practicing mental health professional or is an attorney with a mental health background.[6]

combines assessment, education, case management, conflict management and some decision-making functions.[8]

The parenting coordinator has varied functions, such as assisting parents in developing a detailed parenting plan and/or monitoring parents' compliance with their agreement or court order, mediating child-related disputes between the parents, teaching parents how to minimize conflict, teaching parents effective communication skills and advising parents about children's issues in divorce and child development. In performing their unique role, parenting coordinators, with authorization from the parents, must often consult with other professionals working with the family. If a parent refuses to sign an authorization form and the parenting coordinator believes that contact with a particular professional is crucial, this lack of cooperation can be conveyed to the attorneys and clients, who can then convey it to the court.

It has been suggested that parenting coordinators should be used in situations where parents have severe personality/character disorders, are locked in ongoing impasses and are chronically litigating; parents have difficulty in making important mutual and timely decisions, requiring assistance coordinating their parenting efforts, but who have minimal characterlogical disorders (*e.g.*, someone who does have some ability to take responsibility for his/her actions); potentially abusive situations where there are ongoing but unsubstantiated allegations of abuse (of child, of other parent or both); and parents have demonstrated intermittent mental illness.[9]

The Association of Family and Conciliation Courts (AFCC) has been very active in defining the role of parenting coordinators. According to the AFCC Guidelines (2005), "[t]he overall objective of Parenting Coordination is to assist high conflict parents to implement their parenting plan, to monitor compliance with the details of the plan, to resolve conflicts regarding their children and the parenting plan in a timely manner and to protect and sustain safe, healthy and meaningful parent/child relationships." High conflict, by one state statute, has been defined as follows:

> any action for divorce, paternity, or guardianship where minor children are involved and the parties demonstrate a pattern of ongoing (a) litigation, (b) anger and distrust, (c) verbal abuse, (d) physical aggression or threats of physical aggression, (e) difficulty communicating about and cooperating in the care of their children, and (f) conditions that in the discretion of the court warrant the appointment of a Parent Coordinator.[10]

APPOINTMENT OF A PARENTING COORDINATOR

According to the Parenting Coordinator Pilot Program implementation guidelines approved by the New Jersey Supreme Court in March 2007, the court, after finding good cause shown or upon agreement of the parties, may appoint a parenting coordinator in any action involving parenting responsibility or parenting time of a minor child.[11] The appointment may be made at any stage in the proceeding after entry of an order establishing child custody and/or parenting time.[12] In this state, the court may not appoint or consent to the appointment of a parenting coordinator in any case with an active temporary or final restraining order issued pursuant to the Prevention of Domestic Violence Act.[13]

There are a number of experienced parenting coordinators who disagree with this prohibition, believing that certain parents with restraining orders are in great need of a referee to help deal with parenting issues. The parties may agree to a specific person to serve as the parenting coordinator upon the court's approval or the court may appoint a parenting coordinator from an approved roster, which is maintained by the Administrative Office of the Courts.[14] Appointing a parenting coordinator does not diminish the court's exclusive jurisdiction to decide fundamental issues of custody, parenting time, or support and its authority to manage and control the case.[15]

The court may order the appointment of a parenting coordinator upon application of either party, upon a joint application or on its own motion.[16] Although most parenting coordinators are either appointed or selected post-judgment, using a parenting coordinator during the pendency of a case can be very helpful. For instance, in

It is customary practice that a parenting coordinator's recommendation is non-binding, and either an objecting party may file a motion to request that the recommendation not be implemented or the party supporting the recommendation may file a motion to ask that the recommendation be implemented.

some cases that are not terribly high-conflict, a parenting coordinator, especially in non-pilot counties, can establish the custody and parenting time schedule with consent of the parties. In such cases, the parenting coordination process can obviate the need for a costly custody evaluation and potential custody trial. In other *pendente lite* situations in which there is high conflict, a parenting coordinator can help the court understand if the major source of the conflict is driven more by one party.

Since the court is already involved in the case, positions can be advanced using the input from an objective and impartial parenting coordinator. However, parenting coordinators, unless instructed otherwise by the court, should convey their assessment and observations directly to the attorneys and clients, rather than directly to the court.

AREAS OF DECISION-MAKING AUTHORITY

Pursuant to the New Jersey Parenting Coordinator Pilot Program, the order of appointment of a parenting coordinator may specify those matters the parenting coordinator is authorized to address. The order of appointment may also specify which recommendations will be immediately effective and which will require court review by the filing of a motion before taking effect.[17]

It is customary practice that a parenting coordinator's recommendation is non-binding, and either an objecting party may file a motion to request that the recommendation not be implemented or the party supporting the recommendation may file a motion to ask that the recommendation be implemented. There are some experienced parenting coordinators, however, who believe that parties would benefit by avoiding litigation if the recommendation automatically becomes binding if the opposing party does not file an application with the court for a different determination within a defined time frame.

The order of appointment may authorize the parenting coordinator to make recommendations to the parties and/or attorneys, to implement an agreement between the parties, or to make a recommendation during time-sensitive circumstances. By way of illustration, but not limitation, the order of appointment may authorize the parenting coordinator to make recommendations regarding the following areas:[18]

A. Minor alterations to or clarifications of parenting time/access schedules or conditions with respect to weeknights, weekends, holidays or vacation parenting time that do not substantially alter the existing parenting plan
B. Transitions/exchanges of the children, including date, time, place, transporter and means of transportation
C. Healthcare management, including medical, dental, orthodontic and vision care
D. Implementation of any custody and parenting time order
E. Child rearing issues, such as manner of discipline
F. Child care arrangements such as day care, babysitting or both
G. Referral to professionals who may help improve family functioning, such as psychotherapists or other mental health providers, including substance abuse assessment/treatment, psychological testing or assessment, or counseling for the parents and/or children
H. Parenting classes for either or both parents
I. First and last dates of summer vacation
J. Schedule and conditions of communication between a parent with the child(ren) when the child(ren) is(are) not in that parent's care, including telephone, cell phone, pager, fax and email communication
K. Selection and scheduling of activities such as educational programs, day care, tutoring, summer school, special education instruction, academic testing and programs or other major educational decisions
L. Enrollment in enrichment and extracurricular activities, including camps and part-time jobs
M. Religious observances and education, but not choice of religion[19]
N. Issues involving the children's clothing, equipment and personal possessions
O. Communication between the parents about the children, including telephone, fax, text-messaging, email, notes in backpacks, etc.
P. Role of and contact with the parents' significant others and extended families
Q. Minor financial issues, such as payment for the children's extracurricular activities, day care services, transportation between households, etc.
R. Children's miscellaneous travel issues, including travel arrangements, whether they can travel alone, passport arrangements, etc.

LIMITATIONS ON DECISION-MAKING AUTHORITY

In most states that use parenting coordinators, there are limitations on their decision-making authority. Typically, each jurisdiction defines the area and degree of authority, including limitations, granted to the parenting coordinator.[20] The New Jersey Parenting Coordinator Pilot Program guidelines specifically indicate that the parenting coordinator may not make any modification to any order, judgment or decree, unless all parties agree and enter into a consent order.[21]

Although the pilot program guidelines do not specify the limitations of the parenting coordinator's authority in detail, it is understood by parenting coordinators that there are certain areas in which a parenting coordinator may not make recommendations. By way of illustration, but not limitation, a parenting coordinator may not make recommendations regarding the following areas:

A. Determining or resolving major financial issues, such as child support
B. Modifying a prior parenting plan, decree or order in a manner that would reduce the total parenting time of either parent or that would change the designation of parent of primary residence
C. A determination of parenting plan or orders[22]
D. Permitting the relocation of the residence of the child or permitting the removal of the child from the state of New Jersey[23]
E. Determining which religion the children will be raised
F. Creating binding parenting orders[24]

QUESTIONABLE AREAS OF DECISION-MAKING AUTHORITY

Given that the New Jersey Parenting Coordinator Pilot Program is fairly new, there are areas the parenting coordinator may be asked to address, but which may not be appropriate for the parenting coordinator to address. These could be considered questionable areas of the parenting coordinator's decision-making authority. For instance, a parenting coordinator was involved in a matter in which she believed that one parent should have supervised visitation, but was unsure if she had decision-making authority in this area. Accordingly, the parenting coordinator wrote a letter to the attorneys recommending that there be supervised visitation and the reasons therefore. In that case, the parent who was not recommended to have supervision filed a motion so the court could make a determination.

In another matter, the parenting coordinator believed one parent's parenting time should be suspended pending a psychological evaluation of that parent and crisis intervention for the parties' two children. Recognizing that a parenting coordinator cannot make a recommendation limiting the parenting time of a parent, the parenting coordinator corresponded with the attorneys setting forth her concerns regarding the well-being of the children, while recommending that the one parent have a psychological evaluation and that the children be offered crisis intervention. Based upon that letter, an order to show cause was filed by the other parent.

In one matter, an issue was presented to the parenting coordinator regarding whether the noncustodial parent should be permitted to have his sons ride on his motorcycle with him. In that case, the mother who was the parent of primary residence feared for her children's safety. After considering the request for a recommendation, the parenting coordinator recommended that the father not have his sons as passengers on his motorcycle until they reached the age of majority. The parenting coordinator indicated, however, that she recognized the father had a legal right to have his sons as passengers, and stated that as parenting coordinator she did not have the authority to deny the father his legal right. The parenting coordinator expressed concern that if she recommended that the father be able to have his children on his motorcycle, the mother, despite her valid concerns, would not challenge the parenting coordinator's recommendation. The parenting coordinator thus provided her thoughts and suggested that the father ask the court for a determination.

Some lawyers and parenting coordinators question whether a parenting coordinator may draft a detailed parenting plan *pendente lite* before there is either a court order or a parenting agreement. In one such instance, the parties agreed regarding who would be the parent of primary residence, but were undecided regarding exactly how much time the parent of alternate residence would have with the children. This matter was then referred back to the attorneys for resolution. In other similar situations, as stated previously, some parenting coordinators, especially lawyers, may feel comfortable drafting a consent order as long as the clients understand their due process rights to a custody evaluation and trial, and the attorneys also sign the consent order.

Of course, if the parents do not agree to custody and parenting time, the parenting coordinator is not authorized to make recommendations regarding this major decision.

It is also questionable whether a parenting coordinator may draft a consent order regarding accepted recommendations. In one such instance, the parenting coordinator made recommendations regarding the noncustodial parent's parenting time with the child upon his relocation to a nearby state. The parties accepted the parenting coordinator's recommendations and, after memorializing those recommendations in an email, one parent asked that the parenting coordinator set forth the terms in a consent order. In that instance, unsure of her authority to comply with the

request because of the particular facts in that case, the parenting coordinator opined that the consent order should be drafted by the attorneys involved in the matter.

In another instance, the parties who had agreed that their children would be raised Jewish did not agree regarding whether they would receive their religious education in a reform temple or conservative temple. The parenting coordinator decided to address the question presented, by understanding the interpersonal dynamics of the parties and by using case law. The parenting coordinator made sure the parties were aware that they could seek judicial determination if either did not accept the recommendation, and that such potential rejection of the recommendation would not be considered as uncooperative behavior.

ROLE AND RESPONSIBILITIES FOR PARENTING COORDINATORS

Parenting coordinators must be active and decisive in their interventions with parents regarding child-related issues. This means that the parenting coordinator at times must be forceful in order to accomplish necessary behavioral changes in one or both of the parents. Some parents may view this behavior on the part of the parenting coordinator as biased, partial or non-objective. However, the parenting coordinator must have thick skin and be able to be firm in recommending concrete behaviors and behavioral changes. The parenting coordinator deals with current issues only, and must be focused on those issues and interactions without exploring issues related to the past, family of origin or symptomotology.[25]

According to the AFCC guidelines (2005), a parenting coordinator is not a custody evaluator, a lawyer or a therapist for either of the parties or their children. Although the parenting coordinator is not a mediator, parenting coordinators use mediation skills. It is important for parenting coordinators to mediate parenting concerns in order to reach agreements. If the parents cannot reach an agreement, the parenting coordinator will need to make a recommendation if it is within the scope of his or her decision-making authority. If the issue is outside the scope of decision-making authority, the parenting coordinator needs to direct the parties to their attorneys.

The specific roles and functions of the parenting coordinator as set forth in the AFCC Task Force on Parenting Coordination (2005) and Susan Boyan and Ann Marie Termini are as follows:[26]

A. The parenting coordinator serves as an assessment function in the following ways:
   - Review custody evaluations, relevant records, interim or final orders, information from interviews with parents and children and other collateral sources;
   - Assess the family's overall functioning;
   - Assess the child's emotional functioning and the emotional impact of parental behaviors on the child;
   - Assess each parent's overall personal intrapsychic functioning (i.e., occurring within one's personality);
   - Assess the interpersonal relationship of the parents and their degree of cooperation or conflict;
   - Assess the sources and degree of outside influence, including grandparents, stepparents, siblings and significant others; and
   - Assess the communication styles and the impasses in reaching consensus and evaluate the need for outside referrals.

B. The parenting coordinator serves an educational function in the following ways:
   - Educate the parties about child development and children's issues in divorce;
   - Educate the parties about divorce research and the impact of parental conflict on their child's development and adjustment to their divorce;
   - Identify each parent's contribution to parental conflict and present this to the parties;
   - Identify each parent's negative belief about the other parent and explain how this undermines their ability to reach consensus; and
   - Teach parents effective communication skills, conflict resolution skills, negotiation skills and anger management skills.

C. The parenting coordinator serves in a coordination/case management function as follows:
   - Work with and consult with the professionals and systems involved with the family (for example, mental health, healthcare, social services, educational and legal), and the extended family, including stepparents and significant others;
   - Record and monitor family progress and compliance;
   - Identify the therapy that is needed for family member(s) and make recommendations for educational and therapeutic resources, such as parenting classes, family therapy, supervised visitation, drug and alcohol assessment, random drug and alcohol screening; Alcoholics Anonymous and anger management classes;
   - Assure that there is parental compliance with court orders or their agreements;
   - Assess and maintain the child's emotional and physical safety;
   - Monitor parenting time arrangements and, if and when necessary, alter the arrangements in order to reduce parental conflict;
   - Ensure parental access to the children; and
   - Enforce appropriate parental conduct.

D. The parenting coordinator serves in a decision-making func-

tion. When parents are unable to decide or resolve disputes on their own, the parenting coordinator is authorized to make decisions to the extent described in the court order, or to make reports or recommendations to the parties, attorneys and court for further consideration. In almost all situations, unless agreed to otherwise by the parties, attorneys and the court, the parenting coordinator's recommendations are non-binding. Parties engaged in the parenting coordination process do not lose their due process rights to have a court render binding decisions.

However, experienced parenting coordinators believe that in order to be effective in their difficult role, they need the court to support them. This is particularly so in certain situations where a difficult parent, without the consent of the other parent, arbitrarily and without merit seeks the termination of the parenting coordinator or the parenting coordination process altogether.[27]

CLARIFYING THE PARENTING COORDINATOR'S ROLE IN A LEGAL DOCUMENT

Before beginning the parenting coordination process in any particular case, the parenting coordinator must have a clear sense of his or her role and responsibilities. This may be set forth in a court order or in the parties' settlement agreement. The New Jersey Parenting Coordinator Pilot Program has included a specific form of order appointing a parenting coordinator, which the parenting coordinator should receive before initiating contact with the parties.

In the event a parenting coordinator is contacted to serve in that role, it is important to either receive the specific court order or to ask the court to specifically address its expectations in a written form. In the event a court order or settlement agreement is not clear, the parenting coordinator has several options to address the issue:[28]

1. The parenting coordinator may contact both attorneys and ask them to either prepare or revise the court order or settlement agreement. Recently, a parenting coordinator was appointed in a matter in which there was a final restraining order, in addition to being asked to make recommendations regarding the amount of time the parent of alternate residence would have with the minor child. Recognizing this was a case in which there was a final restraining order and that there was an evaluation component of the order, the parenting coordinator presented the issues to the attorneys, suggesting that they confer with the court and change the order of appointment from that of parenting coordinator to that of guardian *ad litem*.
2. If the parenting coordinator is ordered by the court, contact the law clerk and explain the situation if there is a problem with the court's order. It is best to try to clarify the role with the law clerk, rather than with the judge because it may be considered an *ex parte* communication. However, the judge has discretion to clarify a court order with the parenting coordinator. In a recent matter, a parenting coordinator was appointed with the assignment to make recommendations regarding parenting time for the noncustodial parent after he moved out of state. Because a recommendation under those circumstances would necessarily reduce and significantly change that parent's parenting time, the parenting coordinator needed to clarify her role with the court.
3. Request that the parties contact their attorneys to ask that an order or agreement be entered by the court. In one current case, the attorneys referred the parties to a parenting coordinator in order to help implement a detailed parenting plan. The parenting coordinator, before agreeing to undertake the task, provided the clients with a form of order, as set forth by the Administrative Office of the Courts, to forward to their attorneys for filing with the court.

CONCLUSION

Parenting coordination is a valuable program for the family part and, indeed, for divorcing parents and their children. Experienced parenting coordinators have found the process to be extremely beneficial to some parents and their children. This assessment is derived from the expression of appreciation by the parents and/or children and by the reduction of future litigation, especially by otherwise very litigious parties.

Certainly, the process is very effective when both parties agree to use the process and both find the parenting coordinator to be fair and impartial. Other instances when the process is particularly effective is when otherwise uncooperative parties believe the parenting coordinator has authority and/or the parenting coordinator has the support of the judge involved in the case.

As the use of parenting coordinators becomes more widely used, the judicial, legal and mental health systems will need to find effective ways to work collaboratively to achieve the best results for children and families. ■

ENDNOTES

1. Boyan, S. and Termini, A.M. (2005), *The Psychotherapist as Parent Coordinator in High Conflict Divorce: Strategies and Techniques* (p. 29), New York: The Haworth Press, Inc.
2. *Id*.
3. www.judiciary.state.nj.us/notices/2007/n070403a.pdf.
4. This is assuming that the parenting coordinator is either a mental health practitioner or an attorney with a mental health background.
5. Boyan, S. and Termini, A.M.,

supra at 30; *Source*: Ward (1997, p.24).
6. Id. (Please note that the chart has been modified to reflect the perspective of the author.)
7. *Id.* at 31.
8. The AFCC Task Force on Parenting Coordination (2005), Guidelines for Parenting Coordination.
9. *Id.* at 31, citing Johnston, J. and Roseby, V. (1997) *In the name of the child: A developmental approach to understanding and helping children of conflicted and violent divorce.* New York: Simon and Schuster.
10. *Id.* (p. 33), *citing* Oklahoma Parenting Coordinator Act, May 2003, www.oscn.net.
11. www.judiciary.state.nj.us, *supra*, at page 2.
12. *Id.*
13. *Id.*
14. *Id*.
15. Cite authority for the proposition that the court is not allowed to defer decision-making authority regarding children to others, including mental health professionals.
16. *Id.*
17. *Id.*
18. *Id*., AFCC Guidelines, *supra*, at 13-14
19. Note the implication of *Feldman* v. *Feldman*, 378 N.J. Super. 83 (App. Div. 2005), which the author presumes is the reason that "choice of religion" is not be facilitated.
20. Boyan, S. and Termini, A.M., *supra* at 36.
21. www.judiciary.state.nj.us, *supra,* at 3.
22. However, as stated above, with the consent of the parties, the parenting coordinator can help determine the parenting plan. Should this occur, the parenting coordinator would be wise to instruct the clients to review the consent order with their attorneys before signing it.
23. Upon consent of the parties, a parenting coordinator can help parents resolve relocation issues. However, if the parties do not reach a mutual consensus, the parenting coordinator should not offer an opinion or recommendation regarding this major issue.
24. Unless by consent of the parties, as described above.
25. Boyan, S. and Termini, A.M., *supra* at 46.
26. *Id.* at 47-48.
27. Of course, there are situations in which the parenting coordinator is either not fully familiar with family law is unfamiliar with personality and family dynamics and, thus, may not be qualified, or sometimes a parenting coordinator who is not properly trained may overstep his/her boundaries. In these instances, a party's objection to a recommendation or a party's request to have the parenting coordinator removed may be understandable, and thus warranted.
28. Boyan, S. and Termini, A.M., *supra* at 50.

***Linda A. Schofel** is a partner in the firm of Newman, McDonough, Schofel & Giger, P.C. in Roseland. A licensed, clinical social worker, she specializes in the practice of family law, with particular expertise in the area of parenting coordinating, serving as a guardian* ad litem *and assisting families with the resolution of child-related issues.*

Editor-in-Chief Column

Continued from page 6

consciously utilized my life experiences to articulate issues within our family practice as an illustration that all of our clients have real family issues that often require imaginative legal reasoning, often within a difficult factual matrix. It is that ever-changing factual matrix of family within the confines of our evolving legal system that requires a publication such as this to continue to promote and effectively articulate the cutting-edge issues, which we deal with each day in our practice. Thus, in an effort to spark debate and promote positive changes in our system, I have written about mandatory economic mediation, child support guidelines, preliminary disclosure statements (for my fellow 'older' colleagues), case information statements, open adoptions and domestic violence during my tenure. Topics such as these require constant examination, since they are ever-evolving as our world and family unit change.

Change is a good thing. It effectively promotes positive aspects of thought and experience, and discards those that are less useful. Change promotes a new, invigorating environment for collaborative thought, and it is with that sense I now formally become an editor-in-chief *emeritus*, like my colleague and good friend, Lee. (Don't worry; you are not getting rid of us. We will still write for the periodical, which we continue to believe is a vital part of family practice in New Jersey.)

I thank all of the past members of the editorial board and all of the individuals who helped me succeed as the editor-in-chief of this publication. I look back on our collective work as something we all can be extremely proud of, and something I know will continue under the leadership of Chuck and Brian. I congratulate both of them on their well-deserved recognition, and look forward to the continued success of an essential part of the family law practice in New Jersey: the *New Jersey Family Lawyer*. ■

Report to the Family Law Section Executive Committee From the Children's Rights Subcommittee

SUMMARY OF REPORT

The mission of the Subcommittee on Children's Rights is to make a difference in the lives of children whose parents are getting divorced or separating, or who are involved in custody and/or parenting time disputes. The work of the subcommittee focused on FM and FD custody cases, and on those DV cases in which custody and parenting time are determined.[1] The subcommittee will not be addressing children in court (Division of Youth and Family Services or DYFS) matters.

The subcommittee identified a number of issues, some of which were addressed this year, and many of which subcommittee members believe are matters for future study next year. The following topics were the focus of this year's activities:

1. *Should there be limits on the number of experts in contested custody cases? Should Rule 5:3-3 be revised, and if so, how?* Specifically, the subcommittee considered whether the rule should be changed to require that courts appoint one custody expert initially and permit the parties to obtain their own experts only upon application with a showing that further evaluation is in the child's best interests. The general consensus was that the family bar and the mental health community should be engaged in an organized, on-going dialogue to address this issue.
2. *Custody neutral assessments (CNAs): what are they; how should they work; how do they work?* CNAs have historically been utilized in Burlington County. Some judges in Ocean and Mercer counties have more recently ordered CNAs. A program to institute use of CNAs is being established in Middlesex County. The subcommittee sought information to assess the effectiveness of CNAs and barriers to more widespread implementation.
3. *Programs to help children involved in custody disputes and supervised parenting programs outside the court programs.* The subcommittee researched and collated this information for use by the bench and bar.
4. *The subcommittee recently began to explore ways to help parties resolve custody disputes without litigation.* One recommendation for cases in which custody is contested at the outset is to require parties to spend several sessions with a 'child specialist' prior to engaging experts to conduct best interest evaluations.

APPOINTMENT OF EXPERTS

New Jersey has limited court rules regarding the appointment of custody experts. The subcommittee expressed concern regarding the potential negative impact that numerous evaluations may have on children. Members of the subcommittee raised and discussed several questions, including:

- Do custody evaluations have a negative impact on children?
- Should there be a limit on the number of experts in contested custody cases?
- Should there be a change in the Court Rules or a standardized protocol requiring one expert initially (either court-appointed or selected by consent of the parties), before parties are permitted to select their own experts?
- Should there be standardized protocols for completion of reports, and for communication by experts with counsel, parties and the court?

To help inform the dialogue, the Young Lawyers Subcommittee of the Family Law Section Executive Committee conducted extensive national research and found there is a lack of uniformity among the states in how experts are selected and the number of evaluations that are permitted. The subcommittee wishes to express its sincere thanks to those young lawyers who conducted this research. Their time and effort was very much appreciated.

Eight forensic psychologists, each with substantial experience conducting custody evaluations, worked with the subcommittee and provided valuable feedback on this issue. There was a consensus among them that it is better to start with one expert. They all expressed a preference for being a joint, rather than a 'partisan' expert, citing the stress on the child of multiple interviews, the potential for a story to change as more interviews are conducted over time, and a child's penchant for skewing the story depending on whether they are talking to Mom's expert or Dad's expert.

The subcommittee focused on "the Florida Rule,"[2] which directs initially that one expert be court appointed or agreed upon by the parties. After the initial evaluation, either party may seek further evaluation, which the court may grant upon a showing that such evaluation, testing, etc., is in the child's best interests.

With the input of the mental health professionals, the subcommittee identified reasons both in support of starting with one neutral evaluator and concerns about such a process.

REASONS TO SUPPORT STARTING WITH ONE NEUTRAL EVALUATOR:

- Limiting the number of interview/ interventions so the process does not "get muddied."
- Making the process faster and less expensive.
- Encouraging the parties to be less likely to seek another evaluation, thereby promoting settlement earlier. Any subsequent evaluation/assessment would be based upon the children's best interests and need not be another full-blown evaluation.
- Fostering the experts' preference of being neutrally appointed.

CONCERNS ABOUT STARTING WITH ONE NEUTRAL EVALUATOR:

- If starting with one neutral evaluator, that expert's report may carry more weight than the weight given to a partisan expert.
- A party who rejects a neutral evaluation would request another expert, which may prolong the case. There is a need for clear, established timeframes for engaging experts to avoid delays.
- If both parties are dissatisfied with a neutral evaluation they can end up with three evaluations—one neutral report and two partisan reports.
- This need not be mandatory. It can start with a presumption for one expert and then, as in Florida, either party may apply for his or her own expert, and the decision whether or not to allow it is based on whether it is in the children's best interests to do so.
- A rule limiting the number of evaluations could limit the parties' due process rights.
- Courts may deny motions for additional evaluation/assessment due to calendar considerations or misplaced confidence in a particular expert, even where the expert has missed the mark.
- Using one evaluation in cases in which a domestic violence restraining order is in effect is contrary to the statutory scheme of the Prevention of Domestic Violence Act. In addition, using one evaluation where there is a power imbalance may create a skewed result.

The subcommittee did not reach consensus regarding whether New Jersey's current rule permitting each party to retain his or her own expert from the outset should be modified consistent with the Florida rule. Instead, the subcommittee decided to focus on ways to divert parents from litigation through education and other alternatives. The challenge is to find a way to balance the best interests of the child with each party's due process rights in a way that does not unduly prolong the litigation process.

INTERFACE WITH THE MENTAL HEALTH COMMUNITY

The forensic psychologists raised concerns related to the boards that govern the various mental health professions in New Jersey. Some of the guidelines issued by these boards do conflict, or have the potential to conflict with the court rules and processes that govern mental health professionals' involvement in cases. As rules and regulations are promulgated by either the courts or the various licensing boards, there should be consultation among the professions.

The subcommittee recommends an on-going, formalized dialogue between the Supreme Court Practice Committee and the Licensing Board for Psychologists on issues involving children of divorce to ensure that the rules of each forum are consistent with one another.

The subcommittee believes there are numerous issues for which such a task force could be of assistance to all disciplines and ultimately provide great benefit to children of divorce. Thus, the subcommittee recommends there be an organized, on-going dialogue between the subcommittee and forensic mental health practitioners to address issues arising out of custody and parenting time disputes.

CUSTODY NEUTRAL ASSESSMENTS (CNAS)

The subcommittee solicited feedback from attorneys and psychologists who have experience with CNAs. CNAs were created in Burlington County and have been used there, and in Ocean County, for several years. Practitioners expressed frustration at the lack of definition of CNAs, confusion over what CNAs can accomplish, and the fact that while CNAs are not custody/parenting time evaluations, they are expected to serve a similar purpose.

Basically, a CNA is an assessment by a mental health practitioner involving observation sessions/ interviews to provide a 'snapshot' of a family situation, including concerns and issues expressed by family members. These do not involve psychological testing or collateral checks. Since it is a preliminary assessment, it cannot include recommendations. CNAs were never intended to be custody evaluations. Rather, the assessor gives the court 'impressions' of what might be done to move the case along (*i.e.*, a risk assessment, appointment of a parenting coordinator, custody evaluation or other assessment). It does not generate a specific custody or parenting time recommendation.

CONCERNS ABOUT THE USE OF CNAS:

- Whichever party the CNA tends to favor may see the CNA as an

evaluation and expect that no further evaluation is appropriate. This reflects an apparently common misunderstanding as to what the CNA is intended to accomplish.
- Judges and lawyers may not understand the limitations of CNAs. Some think CNAs are shorter, less expensive custody evaluations.
- Although used with families who have few resources, the reports are often vague, weak and lack guidance or recommendations. While intended to save money, their utility is questionable.
- The uneven quality of the reports and qualifications of the assessors is problematic.
- The process sometimes takes too long. By the time the parties attend the parent education class, followed by custody and parenting time mediation, and then undergo the CNA, there is insufficient time to hire an expert to do a custody evaluation if one is needed.

The CNA, at best, may serve as a wake-up call to help parties see how they are perceived and encourage more realistic demands for custody, thereby moving cases toward resolution. Uniform written materials and protocols should be developed to describe CNAs, and what they can and cannot provide to parties and the court.

If it appears that a custody evaluation is warranted, a CNA is not appropriate. If it is unclear whether an evaluation is needed, a CNA can be helpful, but everyone must understand that the CNA is not itself that evaluation.

IDEAS REGARDING HOW USE OF CNA CAN BE IMPROVED

To avoid confusion between CNAs and custody evaluations, it may be helpful to re-name CNAs. Specific suggestions included parenting neutral interview, parenting assessment interview, parental neutral intake, or custody/parenting screening. Another way to avoid confusion and promote uniformity would be to use a format that is clearly different from custody evaluations. This could be a series of written questions on a form, with a list of recommendations at the end. If a checklist or questionnaire is used, some narrative would still be important.

In any event, if CNAs are being adopted as a tool for the courts around the state, there is a need to develop clear and uniform materials to educate the court, attorneys and litigants as to the definition, purpose and format of CNAs.

Some suggested that CNAs may be useful in *pro se* or FD cases, particularly those in which litigants are not able to clearly articulate the family's situation or their concerns. Judges can use information from CNAs to help identify issues and focus inquiries and determine the need for clinical evaluations.

It is unclear whether CNAs, if they are not considered clinical tools, must be performed by mental health professionals. If they do require mental health expertise, CNAs may be an opportunity for mental health practitioners who are not yet licensed (under permit), who would act under supervision of licensed clinicians, to gain experience, provided that the licensing boards approve. Perhaps forensic psychologists and subcommittee members can work together to develop this assessment tool and ask the Board of Psychological Examiners to have its licensing standards accommodate the use of that tool. Further investigation is needed to determine if this is a viable option.

CHILD SPECIALISTS

A child specialist is a mental health professional with specific training and experience working with families and children in divorce/separation. The child specialist helps parents clarify children's needs and interests by giving the children an opportunity to voice their concerns, giving parents information and guidance to understand the impact of divorce on the children, coaching parents on how to help the children through the divorce process, and providing information to counsel to assist in developing a parenting plan based on the needs of the children.

The question arose regarding when child specialists should be brought into a case. These professionals could be used for any matter in which there is no parenting plan by the first case management conference. Referrals to a child specialist could be made at the time of the initial case management conference and included in the order. Then, at the second case management conference, counsel and judges can discuss whether progress is being made and if not, send parties to an expert for evaluation. Another option could be to send the parties to mediation (under the current programs), and, if that is unsuccessful, have the family work with a child specialist. The purpose would be to defuse conflict, avoid custody evaluations, and assist parties in working out cooperative parenting plans. Timing may differ from county to county depending on how quickly case management conferences and mediation actually take place.

Child specialists are used in the collaborative divorce process, but can be utilized in cases that do not follow the collaborative model. The subcommittee aims to look to the mental health community or the collaborative divorce community to help frame protocols for utilizing child specialists in family cases.

PROGRAMS FOR CHILDREN

While all counties have parenting education seminars for litigants in divorce cases, there may also be a need for small group, age appropriate seminars for children whose parents are involved in divorce. There are some 'divorce groups' for children, in which a mental health professional helps children generally address the feelings and anxieties that are normal for them to be

experiencing, and to know that other children are having similar experiences. These may be sponsored by schools, community groups, or mental health practitioners on an as-needed basis.

The subcommittee solicited information from Family Law Section Executive Committee members, liaisons and young lawyers seeking information about programs around the state. A list of programs is attached to this report. **Please Note:** The inclusion of a program on the list does not constitute an endorsement by the subcommittee.

The Passaic County Kids Count Program, started by the Hon. Michael K. Diamond in 2000, is particularly noteworthy. The program is for children whose parents were going through a divorce, and it runs once every three to four months. According to the website, the program is coordinated and moderated by Kira S. Struble, Esq., mediation coordinator.

The program takes place at the courthouse, where the children visit the courtroom and meet the judge. The object of the program is to help children express their feelings about divorce, as well as to humanize the courts for them. The program uses art and writing, as well as discussion, to help children between the ages of seven and 15 to understand:

- the divorce is not their fault,
- they are not alone, and
- their family's role in the court process

Following the program, the packets are sent to the parents so they have the opportunity to see what their children are thinking and feeling. The majority of participants in this program were later able to resolve their custody and parenting issues without the necessity of a trial. One of the subcommittee's members, Judge June Strelecki, shared ways she had interacted with and involved children while on the bench, such as inviting them to court with their parents for a conversation about the process (not the merits of the case). She found this helped demystify the court process for children and reassure them that the judge is looking out for their interests.

OTHER ISSUES TO BE ADDRESSED BY THE SUBCOMMITTEE IN THE FUTURE

The subcommittee identified numerous issues at the beginning of the year, some of which were researched and discussed. Other topics the subcommittee believes warrant further discussion and study are:

Brief focused assessments: Not all custody cases require a comprehensive custody evaluation. There are other types of evaluations, each of which has a specific focus. These brief focused assessments include early neutral screening evaluations, visitation refusal evaluations, bonding/attachment evaluations, settlement-based evaluations on custody, parenting or removal matters. Although these are all available, many lawyers and judges are not aware of the options. The subcommittee should consider whether to compile information on the various types of evaluations and recommend education or other means to advise the legal community of their usefulness and availability.

Guardians *ad litem:* There are no clear protocols or uniform practice around the state regarding appointment of guardians *ad litem* (GALs). The subcommittee might explore whether there is a need for protocols and guidelines for selection of cases, selection of GALs, definition of the role, and format and distribution of reports. Questions were also raised regarding immunity for court-appointed GALs, the viability of *pro bono* assignments and credits for such representation, and whether any training should be required in order to serve as a GAL. Efforts in this regard might include: surveying judges regarding current utilization of GALs and satisfaction with their performance; surveying other states that may have criteria, protocols and guidelines.

Law guardians: Survey current utilization of law guardians and determine whether expanded use is warranted.

Judges' interviews of children: Examining the utility of interviews, the timing of interviews, the reliability of interviews, training of judges, and protocols.

Attorney education: Related to ethical boundaries and responsibilities of attorneys in divorce and post-judgment custody matters, including whether attorneys have a responsibility to act in the best interests of the children. Attorneys have a strong influence over how clients conduct a case, and the extent to which children are brought into their parents' disputes. The subcommittee should consider a statement that discusses the culture of the advocacy system, its impact on children, and ways in which all parties, including lawyers, can contribute to shifting the focus from conflict to healing.

The collaborative divorce model: General education regarding what this model involves, and whether it should be included in the literature attorneys are required to give litigants regarding alternative dispute resolution.

Parenting coordinators: Examine how parenting coordinators (PCs) are used, and whether they have an impact. There appears to still be confusion regarding the role, which demonstrates that it should be better defined, and judges and attorneys should be better educated about PCs.

RECOMMENDATIONS

1. The Children's Rights Subcommittee should be an on-going subcommittee of the Family Law Section Executive Committee. The subcommittee, along with the chair of the executive committee, should prepare an agenda at the beginning of the year of the issues to be addressed, which

can be modified or expanded as issues arise during the course of the term.

2. The subcommittee should continue its discussions regarding the appointment of experts to conduct custody evaluations and protocols for sharing reports, with the focus on the best interests of the children.
3. One uniform description of a CNA should be developed and used consistently throughout the state. The description should clearly indicate that:
   - A CNA reflects the observations of the assessor.
   - The assessor does not conduct any psychological testing.
   - A CNA is not a custody evaluation or a clinical assessment.
   - A CNA cannot include recommendations regarding custody or parenting plans.
4. The Children's Rights Subcommittee should continue its dialogue with mental health professionals regarding how CNAs, as well as other forms of assessments, can be improved and used to benefit families and children involved in custody disputes.
5. The Children's Rights Subcommittee should explore the use of child specialists in custody disputes.
6. The Children's Rights Subcommittee should explore ways to establish programs like the Passaic County Kids Count Program in other counties.
7. The Family Law Section Executive Committee should take steps to establish a formal dialogue between the Supreme Court Practice Committee and the Licensing Board for Psychologists and the Licensing Board for Social Workers on issues involving children of divorce to ensure that the rules of each forum do not conflict with one another.
8. The Children's Rights Subcommittee should continue its dialogue with mental health practitioners regarding issues arising out of custody disputes, and develop alternative ways to resolve custody disputes that balance the best interest of the child and each party's due process rights without prolonging the litigation process. The subcommittee should solicit comments from the mental health community, invite forensic practitioners to participate in meetings, and consider holding period conferences in which the legal and mental health communities study particular issues. ■

ENDNOTES

1. FM matters are dissolution cases. FD matters are non-dissolution cases, *i.e.,* family matters involving custody, support and related issues between non-married persons or married persons not yet going through a divorce. FV matters are domestic violence cases.
2. Florida Rule 12.363. EVALUATION OF MINOR CHILD
   (a) Appointment of Mental Health Professional or Other Expert.
   (1) When the issue of time-sharing, parental responsibility, ultimate decision-making, or a parenting plan for a minor child is in controversy, the court, on motion of any party or the court's own motion, may appoint a licensed mental health professional or other expert for an examination, evaluation, testing, or interview of any minor child or to conduct a social or home study investigation. The parties may agree on the particular expert to be appointed, subject to approval by the court. If the parties have agreed, they shall submit an order including the name, address, telephone number, area of expertise, and professional qualifications of the expert. If the parties have agreed on the need for an expert and cannot agree on the selection, the court shall appoint an expert.
   (2) After the examination, evaluation, or investigation, any party may file a motion for an additional expert examination, evaluation, interview, testing, or investigation by a licensed mental health professional or other expert. The court upon hearing may permit the additional examination, evaluation, testing, or interview based on good cause shown that further examinations, testing, interviews, or evaluations would be in the best interests of the minor child.

This report was prepared by Amy Wechsler and Mary Coogan, with assistance from the Subcommittee on Children's Rights and the Young Lawyers Subcommittee.

NEW JERSEY STATE BAR ASSOCIATION
New Jersey Law Center
One Constitution Square
New Brunswick, New Jersey 08901-1500
www.njsba.com

PRSRT STD
U.S. Postage
PAID
Permit 412
MIDLAND, MI 48642

New Jersey Family Lawyer

Editor-in-Chief Emeritus
Lee M. Hymerling

Editor-in-Chief
Mark H. Sobel

Co-Managing Editors
Cary B. Cheifetz
Charles F. Vuotto Jr.

Associate Managing Editors
Patrick Judge Jr.
Andrea White O'Brien
Brian M. Schwartz
Amy Sara Cores

Senior Editors
Mark Biel
Robert J. Durst II
John E. Finnerty Jr.
Bonnie C. Frost
Frank A. Louis
J. Patrick McShane III
John P. Paone Jr.
Richard A. Russell
William M. Schreiber
Richard Sevrin
Toby Solomon
Michael J. Stanton
Noel S. Tonneman

Junior Editors
Jeralyn Lawrence
T. Sandberg Durst
Judith A. Hartz
Elizabeth M. Vinhal

Associate Editor
Allison C. Williams

Family Law Section Executive Committee Officers

Chair
Charles F. Vuotto Jr.

Chair Elect
Thomas J. Snyder

1st Vice Chair
Andrea White O'Brien

2nd Vice Chair
Patrick Judge Jr.

Secretary
Brian M. Schwartz

Immediate Past President
Edward J. O'Donnell