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Alternative Dispute Resolution Section of the State Bar of Michigan

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The Chair's Corner

by Toni Raheem

CALL TO **SPECIAL TASK FORCE: What are the states that lead in the use of ADR doing that Michigan can and should do to increase the use, understanding and promotion of ADR?** Serve on this groundbreaking Task Force whose purpose is to gather information on how to make ADR better understood, used earlier and considered more frequently in the resolution of all disputes throughout the state.

The ADR Council is forming a new Task Force to research successful methods to educate about, promote and support ADR throughout the state. This special Task Force will research how states and other entities that have successfully done so developed ADR programs that were solidly incorporated into their governmental budgets, dispute resolution/court systems and community culture in general.

This Task Force will gather information from states like Maryland (that has a multimillion dollar state budget to promote and support ADR) or North Carolina (where many disputes are automatically sent to ADR once a case is filed or before), or Florida, Ohio or California (where ADR is generally an intrinsic and valued part of the overall dispute resolution process), to name a few. We will also look at studies done by entities such as the ABA Dispute Resolution Section or the Association for Conflict Resolution on how ADR has successfully been promoted and supported around the country and the world. With this information we in Michigan can learn how to best focus our ADR advancement efforts.

The goal of this Task Force is not to replicate work being done by other ADR Section committees, but to gather data as to what has successfully been done to promote ADR in other places. Committees of the ADR Section can then assess what aspects of those approaches taken in other venues may have the best applicability in Michigan.

To join this important Task Force please e-mail me at arrlaw@sbcglobal.net. OUR GOAL: gather critical information on how to make ADR an intrinsic part of every conflict resolution process in our state.

Appellate Review of Arbitration Awards in the American Arbitration Association

Gene J. Esshaki
Abbott, Nicholson, Quilter, Esshaki & Youngblood, P.C.

On November 1, 2013, the American Arbitration Association ("AAA") published Optional Appellate Arbitration Rules establishing for the first time an internal appeals process for awards issued by the AAA and its affiliated organization, the International Centre For Dispute Resolution (ICDR).

The optional rules provide for a new appeal process within the arbitration process itself that previously did not exist. Historically, under state and federal law, grounds for overturning an arbitration award were strictly limited to actions involving claims that the award was procured by corruption, fraud or undue means; was the result of evident partiality or corruption in the arbitrators; was so imperfect upon its face it could not stand; or where the arbitrators exceeded their powers (the Federal Arbitration Act, 9 U.S.C. § 10).

Rarely, if ever, was an arbitration award overturned by a state or federal court because the grounds for review were so limited. Simple errors of law or erroneous findings of fact are not a basis for overturning an arbitration award in court. Indeed, courts were often instructed not to look beyond the face of an award in ruling upon a motion to overturn.

In announcing the adoption of the new optional appellate rules, the AAA indicated it was responding to requests for an objective, expedited, cost-effective and just appellate arbitral process. In doing so, the optional appellate arbitration rules constructed an appeal process that was designed to be expedient, cost-effective and intended to correct errors that could not be addressed in the limited reviews permitted by state and federal statutes and case law. The rules may be found in their entirety at: http://go.adr.org/appellaterules.

Some of the more interesting highlights of the rules include the following:

1. **Applicability.** The optional appellate rules can only be invoked where provided for in the parties' contract arbitration clause or upon joint stipulation. (A-1)
2. **Scope of Review.** Appeals are strictly limited to reviewing errors of law that are material and prejudicial and/or determinations of fact that are clearly erroneous. (A-10)
3. **Appeal Process.** Appeal decisions are based solely upon the record and materials submitted at the hearings giving rise to the award, absent a determination by the Panel of the need for oral argument, sue sponte, or on motion of a party. (A-15)
4. **Time of Appeal.** The guidelines establish that an appeal should be completed within ninety (90) days after notice of the original appeal is filed. (Introductory Comments)
5. **Composition of Appellate Panel.** The AAA and the ICDR will establish appellate panels that will consist predominantly of former federal and state judges and neutrals with strong appellate backgrounds. (Introductory Comments)

Some of the more interesting aspects of the rules not contained in the general overview above include the following:

1. **Stay of Proceedings.** Upon the filing of a notice of appeal, the award shall not be considered final and binding, no further action shall be taken towards enforcement of the award and all time periods are suspended until the appellate process is concluded. (A-2)
2. **Non-Modification.** The appellate process is not designed to address requests for modifications of an award, which are strictly within the jurisdiction of the hearing panel. The denial of a modification request, however, can form the basis of an appeal. (A-2 b)
3. **Time Limitations.** Strict limitations are established for the filing of the appeal, any cross-appeals, and submission of the record, briefs and cross-briefs. Parties are entitled to one seven (7) day extension for filing a brief upon good cause shown. (A-17)
4. **Limitations on Appellate Decisions.** The rules strictly limit the actions an appellate panel can take with respect to an appeal. The panel can:

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a. Adopt the underlying award as its own, or

b. Substitute its own award for the underlying award (incorporating those aspects of the underlying award that are not vacated or modified), or,

c. Request additional information and notify the parties of the tribunal's exercise of an option to extend the time to render a decision, not to exceed thirty (30) days. The appellate panel is prohibited from ordering a new arbitration hearing or sending the case back to the original arbitrators for corrections or further review. (A-19)

5. **Written Decision.** The decision of the appellate panel shall be in writing and shall include a concise summary of the decision and an explanation of the decision, unless waived by the parties. (A-19c)

6. **Fees and Costs.** The appealing party bears sole responsibility for the filing fee ($6,000) and the fees and costs of the tribunal if no cross-appeal is filed. If a cross-appeal is filed, an additional filing fee of $6,000 is due by the cross appealing party and the fees and costs of the appeal are otherwise to be shared equally or pro-rated if more than two parties are involved. (A-12 and Fee Schedule)

The AAA has indicated that these new optional appellate rules are designed for complex commercial cases, involving significant dollar awards where clear errors of law or erroneous factual determinations have substantially prejudiced a party. This type of a review is not otherwise available in state or federal courts and provides the parties with an option to correct such mistakes. It must be remembered, however, that in order to invoke the appellate rules the optional appeal clause must either be contained in the parties' contract arbitration clause or be stipulated to by the parties. Obviously, a prevailing party is unlikely to enter into such a stipulation after the award is entered, so the issue of optional appellate review needs to be addressed either in the contract formation process or in the order referring an existing dispute to arbitration crafted by the parties in a judicial proceeding.

Cutting Litigation Costs: Mediation Can Help

Lawrence P. Schneider
President of Board of Directors of Resolution Services Center of Central Michigan.

I have practiced law since 1977. Much of that practice has involved circuit or federal court litigation. The amounts at stake were occasionally in the millions (e.g., when I have represented MDOT in eminent domain cases). When the stakes are that high, clients understand that their legal costs will also be high.

Yet I also had many civil cases in district court, where the stakes were often lower than a monthly bill to one of my federal or circuit court clients. Although the court rules suggest that full-blown discovery is not contemplated in district court, I found that judicial policies varied widely. Some district judges allowed open discovery. Some allowed limited discovery. In many situations, the cases were ordered to case evaluation. I found this frustrating, because clients with $10,000-$15,000 claims could face legal bills approaching that amount by the end of the case. Neither the winner nor loser is served by such an expensive system of justice.

A 2011 study commissioned on behalf of the Supreme Court Administrative Office contained many interesting findings, but these two jumped out at me:

- The case evaluation award amount was accepted in 22% of the cases examined in the study. Only 2% were accepted within 28 days.
- Where mediation was held, nearly half of the cases (47%) were settled "at the table." Ultimately, 72% of the cases that went to mediation were disposed through a settlement or consent judgment and without later using case evaluation or going to trial.

These numbers interested me because they affirmed my own experience as a case evaluator and mediator: given the choice, mediation is far more likely to result in settlement.

Yet mediation continues to be under-utilized in many district courts. Most parties select their own mediators these days,

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and a review of the hourly rates for mediators listed by the various circuit court ADR offices reveal that many of the best known, experienced and successful mediators charge in excess of $300 per hour. They are well worth it. Assuming a half day of mediation at a minimum, however, this can tack on $600 or more of additional cost to each side in a district court case. Yet lawyers continue to be cautious about selecting mediators whose names they do not recognize even though they charge only $100 per hour or less. Many of these "unknowns" are or will be fine mediators, but need to develop a reputation as effective mediators in the legal community.

This is where Michigan's Community Dispute Resolution Program (CDRP) Mediation Centers can be of help to all involved persons. Mediation services at the Centers are available at a nominal rate (fees depend upon the nature of and amount in controversy in the case). Although the parties do not have the ability to choose their mediator, I have found that the staff of each Center goes to great lengths to match the nature of the case to its list of experienced volunteers. When new mediators are used, they are often part of a co-mediation with an experienced mediator.

I have heard that some lawyers (and mediators) are concerned that the CDRP mediates cases that should be mediated by those who do it for a living. Yet as a lawyer who has mediated for many years at a mid-range hourly rate, I have never wanted to mediate district court and other modest value cases, even if the parties were willing to pay me. I always ended up cutting my fee. Moreover, those "little" cases have often proved to be the most challenging cases of all! The CDRP agrees that it should have no role in those major disputes that involve paying clients fighting over substantial sums of money. Those cases should be handled by those who mediate as all or part of their livelihood.

But lawyers who find themselves embroiled in a $7,500 district court case cannot justify paying a mediator a substantial fee. This is where a CDRP Center is an ideal choice. Many top mediators fulfill their *pro bono* obligation by serving as a volunteer mediator for one or more CDRP Centers. The volunteer rosters consist of many experienced and well-known mediators. Lawyers who seek assistance from the Centers can rest assured that they will be assigned a competent mediator.

More and more, district judges are referring cases to the CDRP Centers. But there are still many cases that are languishing on the district court dockets around the State as the lawyers churn away at discovery, preparing for trial. Adding another significant cost to the case is just not an option for their clients.

To be sure, not every case is appropriate for mediation. Moreover, not every case should be mediated before discovery has been undertaken or completed. The lawyers are in the best position to make that call. But lawyers who want to make an effort to save their client attorney fees in modest value cases should certainly consider mediating through a CDRP Center. Although mediation may reduce an attorney's fee if the case is resolved early, chances are the client will be back and will give the lawyer's name to others. It all works out in the end! Happy clients are the best source of referrals and more work.

Finally, mediators who have taken the court-approved mediation training, but are looking for a way to get recognized as an effective mediator in order to be mutually selected by the parties in paying cases, might consider volunteering for one of the Centers. One thing is certain in mediation: lawyers and parties who are impressed with their mediators talk about them to others. Mediators have all learned that merely being on the court-approved roster is not likely to bring paying cases to mediators. It is all about "reputation." And a person cannot get a reputation as a good mediator unless the person mediates cases. The best way to check into volunteer opportunities at the Center that covers your area is to check out the Michigan Supreme Court's interactive CDRP site: http://courts.mi.gov/administration/scao/officesprograms/odr/pages/find-a-mediation-center.aspx.

Trial Court Judges as Dispute Resolution Advisors

Richard L. Hurford

The jury trial is one of the most cherished rights of citizens in the United States. The importance of the jury trial to our core democratic values was fully understood by Blackstone who commented:

> [T]he most powerful individual in the state will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression must be examined and decided by twelve indifferent men, not appointed till the hour of trial; and that, when once the fact is ascertained, the law must of course

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> redress it. This therefore preserves in the hands of the people that share which they ought to have in the administration of public justice, and prevents the encroachments of the more powerful and wealthy citizens.

Notwithstanding the lofty status of the right to a trial by one's peers, the long standing trend in the reduction in the number of jury trials has been exquisitely documented and commented upon. *See, e.g.,* Mark Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts,* 1 Journal of Empirical Legal Studies 3, 459 (2004). The forces that have been attributed to the "vanishing jury trial" by commentators are many and varied: discovery costs have increased exponentially and clients, particularly business clients, are demanding greater alignment between the costs of dispute resolution and the achievement of business objectives (as evidenced by the Association of Corporate Counsel's Value Challenge); strained judicial resources have caused the courts to employ case management techniques, including the use of ADR, to achieve metrics that are being increasingly demanded by lawmakers and funding bodies; the proliferation of various forms of ADR in commercial, employment, construction and consumer settings (i.e., arbitration, mediation, med-arb hybrids, dispute resolution boards, etc.) now resolve a wide variety of disputes that otherwise would have been decided by the tier of fact (for example, it is estimated that approximately 25% of the non-unionized work force is a party to a mandatory pre-dispute arbitration agreement); the increased tendency of trial courts to grant motions for summary judgment as a result of the "trilogy" of cases decided by the U. S. Supreme Court that were widely read as encouraging the granting of summary judgment; there is also a growing recognition in general that resolutions, which focus upon mutually beneficial "interest based" solutions, may in some instances be preferable to "rights based" decisions that are imposed by a jury or the trial court; finally, along the "dispute resolution continuum" some disputants are increasingly seeking alternatives that may be more economical, speedier, and provide them with greater control and less "risk" than a trial by jury. *See e.g., The Vanishing Jury Trial: The College, The Profession, The Civil Justice System,* American College of Trial Lawyers (October 2004); Patricia Lee Renfro, *The Vanishing Trial*, 30 Litigation 2 (2004); David J. Beck, *The Consequences of the Vanishing Trial: Does Anyone Really Care*, National Symposium American Inns of Court (May 2013); Thomas J. Stipanowich, *Arbitration the New Litigation,* 1 Univ. of Ill. Law Review Vol. 2010, 1 (2010); Richard L. Hurford, *Is that a Judicial Dashboard Coming Down the Litigation Highway,* Michigan Lawyers Weekly (February 2013); Richard M. Calkins, *Mediation: A Revolutionary Process that is Replacing the American Judicial System*, 13 Cardoza Journal of Conflict Resolution, 1 (2011); Hon. James E. Gritzner, *In Defense of the Jury Trial: ADR Has Its Place, But It Is Not the Only Place*, 350 Drake Law Rev. 60, p. 349 (2012).

Regardless of the "root cause(s)" of the vanishing jury trial, the factors giving rise to this phenomenon are not anticipated to wane in the near future. Certainly, state budget and fiscal constraints on local governmental units will not result in a sudden increase in funding to the judiciary; trial court judges will continue to be expected to do more with less. Discovery and other costs associated with litigation are not anticipated to decrease in the near future. There is also no reason to believe that reliance on court annexed ADR programs will decrease. In sum, there are no readily apparent forces that are anticipated in reversing the trend.

In light of the fact that only 1.3% of the civil cases disposed of by the Michigan Courts in 2012 were the result of a jury or bench trial, it may be time for Trial Court Judges, and those who appear before them, to begin regarding and encouraging the Trial Court to adopt the role of a Dispute Resolution Advisor in addition to that of a Trial Judge. During recent judicial conferences held with Trial Court Judges sponsored by the Michigan Judicial Institute, the Michigan Supreme Court Administrative Office and the National Judicial College, the Trial Court Judges in attendance appeared to embrace the fact that their roles may increasingly include that of a Dispute Resolution Advisor.

In performing the function of a Dispute Resolution Advisor, the Trial Court Judge helps the parties in selecting and pursuing a speedy, economical appropriate and proportionate dispute resolution strategy that achieves a durable resolution that is in the litigant's best interest. In some disputes this may well be a trial, but in the vast majority of disputes coming before the Trial Court this may also involve granting summary judgment (either in whole or in part) in a timely fashion, appointing a facilitator early in the case, engaging in early neutral fact-finding, ordering the parties to engage in a strategically timed mediation or case evaluation, or, after consultation with the parties, recommending or ordering any number of alternative dispute resolution mechanisms. There is a growing body of evidence that the deployment of ADR, to be truly effective, must be introduced early in the case, strategically timed and based upon the nuances of each case (i.e., "Differentiated Case Management"), rather than being relegated to a line item on a computer generated case management

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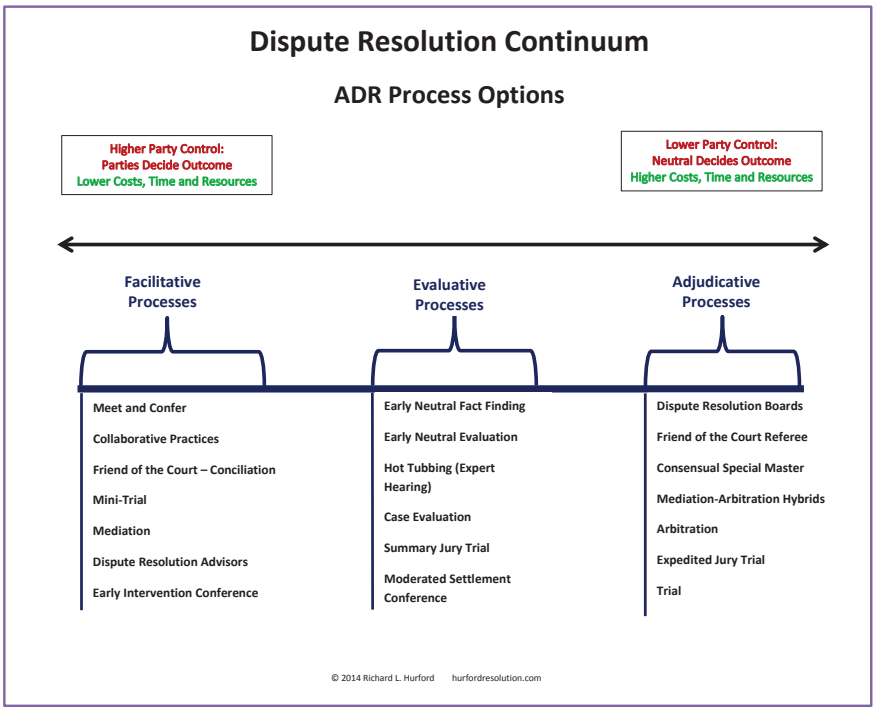
order that is provided to the parties at the outset of the litigation without any meaningful discussion. Hon. William F. Dressel, *Court Organization and Effective Caseflow Management*, The National Judicial College (2010); David C. Steelman, *Caseflow Management: The Heart of Court Management in the New Millennium*, National Center for State Courts (2004).

The shift in the traditional paradigm from a court that focuses solely on preparing the parties for a trial, and a dispute resolution advisor who also counsels the parties as to the most appropriate dispute resolution strategy, can be illustrated in the chart below:

Traditional Trial Judge	Trial Judge and Dispute Resolution Advisor
Short term and long term goals: Focuses the parties on a trial date and prepare the parties for a trial (that in 98.6% of the cases will not take place)	**Short term and long term goals: Assists the parties to voluntarily resolve the dispute if possible (short term) and prepare for trial as necessary (long term)**
Early Case Conference to set event dates that may be computer generated	**Conducts an Early Case Conference with counsel to establish a differentiated case management plan and triage cases for effective ADR strategies**
Preside over discovery disputes and motion practice	**Stages "proportional" discovery and motion practice to support the agreed upon ADR strategies**
Order Case Evaluation just prior to the trial date as the only ADR activity in the case	**Explore multiple and early ADR strategies throughout the life of the case**
Determining legal rights and remedies are the sole focus	**In addition to the determination of legal rights and remedies, judges and neutrals explore the parties' interests and needs-based solutions**
The vast majority of cases resolve relatively late in the litigation process	**The vast majority of cases resolve as early as possible in the litigation process**

Achieving the full potential of the courts to perform the role of a Dispute Resolution Advisor requires an understanding by the Trial Courts and counsel of the great variety of the ADR tools at their disposal. While case evaluation and traditional mediation are two very powerful tools, they are not the only ADR processes available to the Trial Court and the parties in addressing a variety of dispute resolution needs. The Macomb County Bar Association ADR Committee recently published *A Taxonomy of ADR for the Courts*, an excellent resource that outlines a number of processes and the settings in which the available ADR strategies might prove most beneficial to the litigants and their counsel. Along a dispute resolution continuum, the *Taxonomy* categorizes ADR into three main processes (facilitative, evaluative, and adjudicative):



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Judges, attorneys, clients, and ADR practitioners are encouraged to explore the *Taxonomy* (a copy of the *Taxonomy* may be accessed at hurfordresolution.com, the Macomb County Bar Association web site or the National Judicial Council web site). As discussed in the *Taxonomy*, not all ADR practices are judged by whether or not they achieve a settlement of all aspects of the dispute. Strategically employed ADR can be very successful if it: simply narrows or focuses the parties' attention on the legal and factual issues truly in dispute; assists the parties in litigating "proportionately" (for example, is there really a cost benefit in obtaining e-discovery that encompasses 75 search terms rather than being limited to, for example, 10 search terms); provides the parties with an early evaluation of the "risks" of litigation; commences an exploration of an interest based resolution; refining the areas of agreement and disagreement between experts in disputes that involve a classic "battle of the experts" or, fosters a discussion of potentially more cost effective, speedier and just adjudicative models that are more appropriate for the parties than traditional litigation.

As discussed in the *Taxonomy* not all ADR strategies are fungible and are not comparably effective in all settings. For example, regarding case evaluation, Michigan's traditional ADR process, a recent study by the Michigan Supreme Court Administrative Office seriously questioned that process' efficacy in meeting the needs of the parties in all cases. The results of this study, coupled with the recommendations made at a recent Early ADR Summit convened by the Supreme Court Administrative Office, underscore the exciting potential of the Trial Courts evolving toward a Dispute Resolution Advisor model. The results of the early ADR summit can also be accessed at the SCAO web site. *See* http://courts.mi.gov/Administration /SCAO/ Resources/Documents/standards/odr/ADR%20Summit%20Report%20September%204,%202013.pdf. Suggestions for increasing the case management effectiveness of the Trial Courts included the following:

1. Judges should meet lawyers, client, and pro se litigants in a scheduling conference. Early involvement helps identify issues and focuses resources. Judges can use discretion to tailor a scheduling order to a case.

2. Judges, lawyers, and parties should consider using a broader array of ADR procedures, not just familiar "stand by" options.

3. Differentiated case management should be adopted. This practice recognizes a number of tracks for various kinds of cases, and offers a filtering mechanism like the Federal Rule 16 process. The Michigan Supreme Court should consider adopting a special master court rule.

4. Judges should be more actively involved in determining the scope and amount of discovery.

5. If case evaluation is ordered at all, it should take place after mediation.

6. Business court litigation protocols should be standardized across the state so that attorneys, parties, and others have a generalized understanding of the expectations of business court judges and to encourage counsel prior to the litigation to address and perhaps resolve disputed issues. This may also reduce judge/forum shopping.

7. Courts should track and share ADR metrics of what works and what does not work; this would be especially effective for the business courts. Parties should be surveyed regarding their experience with the ADR processes.

8. Mediators should be permitted to provide feedback to the judge following mediation. Judges should be permitted to provide advisory opinions.

9. Parties should engage a knowledgeable neutral third party who is respected by all parties early in the case to help resolve contested issues throughout the litigation.

In sum, the Early ADR Summit, which involved the participation of highly respected litigators and judges from around the state, was a call for the trial courts to assume, at least in part, the role of a Dispute Resolution Advisor as early in the case as possible and pursue that role throughout the life of the litigation. Among the conclusions discussed at the Summit, were the pursuit of the suggested recommendations would result in a settlement as early as possible of those disputes where a settlement is desired by the parties, ensuring that the litigation is proportional, and allows for the early identification of

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cases that need to be tried and provides the court the additional time and resources to prepare and focus the parties for a trial at the earliest practicable date. In this last regard, the early use of ADR, coupled with the trial court's role of a Dispute Resolution Advisor, may ultimately lead to an increase in the use of trials as a dispute resolution technique. Of course, further study will be required to determine if the Trial Court Judge, acting in the role of a Dispute Resolution Advisor, may actually lead to a net increase in the number of jury trials.

DIVORCE and the "MODERN FAMILY": Using ADR to Address Our Ever-Diversifying Society's Family Law Needs

This article is reprinted from the Family Law Journal with the permission of the Family Law Council.
Antoinette Raheem with the contributions of Holly Thompson, Sayed Mostafa, Tim Cordes, Eileen Slank and Belem Morales

We all know that divorce is never a one size fits all process. However, when the parties to a domestic matter are culturally or otherwise diverse, we family lawyers need recognize that even more care should be taken to address the unique needs of the parties. While it goes without saying that, within any group, people are unique and no one group has all the same characteristics, to the extent there may be some prevalent cultural traits to look for and address if present, increasing our cultural competence to do so should be a goal of all family lawyers. This articles serves as a small step toward increasing that cultural competence. Moreover, this article will address ways in which alternative forms of dispute resolution can often play a key role in respecting the cultural values of families with diverse backgrounds.

In writing this article, I was privileged to interview several attorneys (and one budding lawyer to be) with knowledge of various cultures. These generous professionals included Holly Thompson, a family lawyer and Supreme Court tribal judge very familiar with the Native American Indian culture, Tim Cordes, a lawyer who represents many parties from the Lesbian, Gay, Bisexual, Transgender ("LGBT") community in family matters, Sayed Mostafa, a family law attorney who frequently represents Muslim clients, Eileen Slank, a family lawyer who has handled domestic matters for Eastern European parties and Belem Morales, one of my upper class law students who is a first generation Mexican-American. They were all kind enough to share with me some cultural characteristics common among some members of their subject group, how that culture can affect conflict resolution, family law issues prevalent in the group they discussed and/or some ideas on how ADR might address this group's unique characteristics or interests, when applicable. I am deeply indebted to each of these legal savants for sharing their wisdom, experience and time.

Family Law Conflict Resolution in the NATIVE AMERICAN INDIAN Community

Holly Thompson is a Supreme Court Tribal Judge and a current family law attorney in Traverse City. One of the cultural distinctions often present in the Native American families with whom Judge Thompson works is in the family structure. In tribal communities, families often extend beyond the nuclear family, and may even include the entire tribe. This extended family helps with childcare, provides benefits for tribal children and emotionally supports its members and families. Often tribal marriages are not formal, per state law, but nonetheless tribal members are strongly committed to caring for children of tribal families.

The issues addressed in tribal divorces are also often different than in many mainstream divorces. For example, Judge Thompson noted that it is rare to have a tribal family dispute over property. While there may be more tribal issues over custody, by in large children go with their mother after a divorce and her tribe helps to care for the child or children. If the husband and wife come from different tribes the wife would usually have joined the husband's tribe upon marriage. However, the mother usually goes back to her home tribe after a divorce. Whatever tribe the child is a member of usually provides health benefits for the child and parent. While most Native Americans tend to marry other Natives, when a child is the product of a Native

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American and Non-Native, eligibility for tribal benefits may be an issue. Parenting time is rarely disputed and couples tend to be very flexible with parenting time schedules.

There are two formal forums that Native American families can utilize to resolve family law issues—the state court or the tribal court. Whichever court is used, Michigan Child Support Guideline are generally followed. Also, Native American parties will use attorneys, as needed. However, Native Americans often do not like bureaucracy and so try to resolve all conflict before needing to go to a formal court for issue resolution.

One way conflict in family law matters is often resolved in some tribal communities is through "Peacemaking". Peacemaking derives from centuries old traditions and is a culturally based form of mediation. Some times tribal elders serve as the mediators or peacemakers. Some tribes have programs set up with others guiding the resolution process. Some tribes use prayer and/or medicine. Some follow their tribal religions and values such as the Seven Grandfather Teachings, while some are Christian or Muslim or other. Whoever guides the process and whatever tools or religions are at play, the Peacemaking process is designed to address the cultural mores of the tribal members.

If tribal family disputes do end up in a formal court, the behavior of Native Americans in those court settings may vary from what we often see in mainstream family courts. For example, tribal parties may, out of respect, not look at the judge. They may be extremely reserved and quiet, as it is a sign of disrespect to be loud. Judge Thompson also notes that parties will rarely testify untruthfully in court and, in fact, most often will be honest to a fault.

Having said this, it is important to remember that all Native Americans are different. Not only are there the religious differences noted above, but also many other differences are at play such as some tribes being matrilineal while others are patrilineal, etc. There are 12 different federally recognized tribes in Michigan and each has its own unique values, traditions and procedures. Judge Thompson notes that family law practitioners and judges working with Native American families should be sensitive to their culture, as most Native Americans want their issues decided pursuant to their cultural values.

Judge Thompson provided an example of how the important role of Native American culture may sometimes go unacknowledged by courts addressing Native American family disputes. In the situation she described, a Native American mother brought a motion to enjoin her ex-husband from cutting their child's hair. Although the mother explained to the court that the cutting of the child's hair was an emotionally and culturally significant issue in her tribe, the Court ignored the cultural significance of the hair cutting. In contrast, in a different case, a mixed Jewish and non-Jewish couple agreed, while married, to not circumcise their son. Once divorced, however, the Jewish father pushed for circumcision. There, the cultural basis for the request was at least explored by the court. Judge Thompson urges courts to more uniformly consider cultural values in cases involving Native American families.

In summation, Native Americans often utilize their own form of Alternative Dispute Resolution in order to address their cultural values. When they foray into traditional courts, it is still important to recognize the importance to many Native Americans of addressing culture in their dispute resolution process. While backgrounds and cultures may vary widely within the Native American community, careful inquiry regarding the significance of culture to your Native American clients should be pursued as a matter of respect.

Family Law Conflict Resolution in the LGBT Community

Tim Cordes is a Southfield attorney who has represented many clients in the LGBT community in family law matters. He has been president of the Stonewall Bar Association of Michigan, www.michsba.org, for the last 4 years. Stonewall is a voluntary statewide professional association of lesbian, gay, bisexual and transgender lawyers and their straight allies, who provide a visible LGBT presence within the Michigan legal system. Cordes notes he has frequently been frustrated by the lack of consistency in the law as it pertains to LGBT family issues. Often times, because the state of the law is so deficient as it relates to LGBT issues, mediation is the only option for resolution of domestic issues for LGBT families. However, mediation too, has its limitations in addressing some LGBT family law issues, Cordes has found.

LGBT families have many issues unique to their community. A common issue in LGBT domestic matters arises out of the situation where two same sex parents have children but only one is the biological parent. Under Michigan law, the non-biological same sex parent cannot adopt the child and so has no standing to attain custody or parenting time—nor any obligation to pay child support—if the couple separates. This is true even if the parties raised and supported the

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child together for many years and even if, as in some cases, the biological parent is forced to turn to state aid to support the children. While mediation may help the parties in this situation to work out parenting time, if a non-biological parent refuses to support his or her children, there is no incentive for her or him to do so—in court or in mediation.

Mediation has, however, been of use in deciding how to interpret or apply private contracts relating to support, parenting time, etc., that are becoming more widely used between same sex couples. Many of these private contracts, or commitment papers, include co-parenting or joint parenting agreements. Most also include clauses that disputes arising out of them shall be mediated or arbitrated. When mediation is used to resolve disputes about application of these contracts, these private contracts may be fine; yet there are still unanswered questions about how these contracts will hold up if challenged in court.

While Michigan neither allows same sex marriage nor recognizes such marriages performed in other states, Cordes notes that since Michigan has recognized other courts' determination of parentage (in non-LGBT circumstances) there is a hope that Michigan courts will recognize LGBT parentage when determined by another state. As a result, some same sex couples are going to states where same sex parentage is recognized to adopt and then returning to Michigan to raise their children.

However, Cordes is hopeful that the growing nationwide trend toward recognition of same sex marriages will soon take root in Michigan. Until it does, the state-to-state disparities make life for many same sex couples virtually untenable. While the federal courts have held that if a state recognizes a couple's marriage, the federal government cannot deny that couple the privileges of marriage, the federal government has still left it to each state to determine its marriage laws. The result has been a state-to-state inconsistency that, as Cordes notes, in essence results in a couple being married in one state and driving across a border and having their marital status completed eradicated. Family lawyers addressing LGBT issues need to be well versed in their clients' rights from state to state. This is especially true since, as Cordes points out, many LGBT parents have become more savvy about their rights (and the limitations thereon) than the average party tends to be.

Cordes suggests the following flow chart for mediators addressing LGBT family law issues. First, determine if any court has ruled on the legal issue, such as parentage (e.g. has a court determined that the biological parent and birth parent are both legal parents?). Second, if not, evaluate any rights conferred on any party by a private agreement. Third, assess the limitations of enforceability of the private agreement. Given the confidentiality of mediations and the fact that agreements beyond those a court might order are possible therein, mediations often are a viable tool for addressing LGBT family issues.

Family Law Conflict Resolution in the MUSLIM AMERICAN Community

Sayed Mostafa is an American Muslim attorney practicing in Wayne and Oakland counties. He has both a degree from a U.S. law school and a degree in Islamic law. Mostafa opens our conversation by noting that several components of Islam support the use of ADR. First, Mostafa points out that the Quran directs Muslims to live at peace with one another. According to the Quran, when there is a disagreement between spouses, they are to seek peace; if both want peace, God will make it happen. For this reason, among others, many Muslim Americans, especially in the older generation, will not go to court to have their family law disputes resolved unless all else fails. While some younger Muslim Americans will seek court intervention in their family law disputes, family members and respected community members usually encourage them to first pursue resolution through one or more of the Islamic forms of ADR described below.

An overarching term for vehicles of peace in Islam is Sulah, which includes mediation, settlement and other forms of conciliation. In short, Muslims are encouraged to avoid having their disputes resolved in court to the extent possible and to utilize Sulah instead. Another peacemaking process used in the Muslim community for family law disputes is Tahkim, which is essentially non-binding arbitration. Through this process, each spouse chooses an arbitrator, usually not a lawyer, who helps the parties to seek a peaceful resolution.

Islamic law also supports what Western law refers to as Med/Arb—a combination of Mediation and Arbitration. This process begins with a third party facilitating the parties as they try to reach an agreement among themselves. If that does not happen, a third party will decide their family law issues for them. Imams, Islamic religious leaders, often fill the role of Mediator/Arbitrator, although laypersons may serve this function as well.

There are several unique characteristics of Islamic divorce, notes Mostafa. One is that Muslims must be religiously divorced (by Talaq) in addition to being legally divorced. A husband, with a few exceptions, has the unilateral right to

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grant a wife a religious divorce. If a religious divorce is not granted, the wife is not divorced under Islamic law. One of the exceptions to that unilateral right of the husband is if a husband does a wife physical, mental or financial harm. However, the wife always has the right to go to court to ask for custody of the children.

Family law courts cannot force an Islamic husband to give his wife a religious divorce. However, to encourage a husband to grant a religious divorce, some court issued Divorce Judgments will impose spousal support on the husband for every month he does not grant the religious divorce. Imams issue the religious divorce, although it is usually not put in writing until the legal divorce is final. Islamic divorces frequently come before legal divorces if the couple has no children. Legal divorces, in most instances, precede Islamic divorces if there are children involved.

Mostafa points out that, under Islamic law and culture, the road to divorce is paved with many speed bumps to encourage reconciliation. If a couple is having marital problems, the wife usually will first approach her mother and relate the problems to her. The mother then will go to the wife's father who will approach the father of the husband. The husband's father will then talk with the husband to see if he can help the couple resolve their differences. If not, the wife's father and the husband's father will get together and see if they can help work out reconciliation. If that fails, a third party is called in to assist. If that person is unable to reconcile the parties, then the final step is usually to go to an Imam.

While Islamic couples follow the custody, property division and support laws of their resident country, Islamic law is still a major factor in the divorce of Muslim Americans. This Islamic law places a high premium on pursing peace as much as possible. In line with this principle, attorney Mostafa has served as a Mediator and Arbitrator in many Islamic family law disputes, although he would never serve as an attorney in a case in which he had served as a neutral. However, as a Muslim family law attorney, Mostafa believes it is important for a family lawyer in an Islamic couple's divorce to always make sure the couple has pursued every option for reconciliation before proceeding with the divorce. This way the family law attorney assures that the couple has fulfilled their obligation to seek peace where at all possible.

Family Law Conflict Resolution in the EASTERN EUROPEAN AMERICAN Community

Eileen Slank is a family law attorney who works out of her Ann Arbor law office. She recently represented a client of Eastern European descent in a highly contentious divorce from the client's Eastern European American husband. Although unaware of its significance at first, Slank learned early on that the wife was half Russian and half Armenian, while the husband was 100% Armenian.

The first cultural difference Slank noted in this divorce was the extended support each party brought to the divorce process. The wife's two brothers accompanied her in all meetings with her attorney. Similarly, the husband, who lived in a community of virtually all people of Armenian descent, had the backing of his entire village throughout the divorce. This support included financial support as well as moral support; such support is typical in his culture.

Slank learned, during the process of the divorce that in Eastern European culture there is a caste system. Under this caste system, the husband, and his full-blooded Armenian fellow villagers, looked down on the wife because she was only half Armenian. The influence of the "village" on decisions the husband made and positions he took was evident throughout the divorce. Likewise, the wife's brothers attempted to navigate her decision making in meetings with Slank. To help offset the brothers' undue influence, Slank learned to enforce a rule in meetings between her and the client and client's brothers that only English be spoken.

Slank encountered some unique issues in this divorce that arose out of the parties' cultural background. For instance, the husband was extremely upset that the wife was considering keeping his name. In essence, in his culture, once the parties divorced, the wife had no right to continue the "privilege" of keeping the husband's name. Another cultural factor that came into play was the parties' willingness to abide by specific agreements, but nothing beyond that. As a result, Slank noted, all terms agreed upon had to be very specifically spelled out in order to assure compliance with the spirit of the agreement.

The form of ADR Slank utilized for resolution of most of the issues in this matter was a mediative style of negotiation. In short, serving as a pursuer of peace, Slank and her client worked with the husband and his attorney to resolve most of the parties' issues. That this was possible, despite the long history of physical abuse by the husband, is a true testament to Slank's dispute resolution skills. Another factor Slank learned about that may have contributed to the parties' willingness to

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negotiate was a paranoia of the government by many from these parties' culture. Some issues did have to be decided by the court, but they were few.

In answering the question, "What would you do differently, if faced in the future with similar cultural issues, knowing what you know now?" Slank replied that she would begin with asking very specific questions about each party's culture. She would ask the client to explain the impact of culture on the issues in the case. She would inquire about family and family dynamics. She would ask about any cultural biases or stereotypes at play in the case. Most importantly, Slank noted, any family law attorney involved in a case with parties from unfamiliar cultures should know that there is a lot to learn. She urges attorneys to not be afraid to make respectful inquiry about culture, while carefully avoiding stereotyping. By asking such questions and using mediation or negotiation to reach resolution, the parties in her case were able to attain many creative agreements that the court would never have ordered.

Family Law Conflict Resolution in the MEXICAN-AMERICAN Community

Belem Morales is a first generation Mexican-American law student who is quick to recognize that, as such, her experiences may vary widely from those of other Mexican-Americans. Nonetheless, Morales is confident in her assertion that there are many common threads that bind the Mexican-American community.

Morales points out, for example, that in the Mexican-American community, it is a common custom and expectation that first generation Mexican-Americans are to continue to embrace Mexican culture, while conforming to American lifestyle. This pressure to adapt to two cultures can be a challenge to many Mexican-Americans, according to Morales.

Sharing insights into her history, Morales sheds light on some of the bases for cultural values prevalent in the Mexican-American community. For example, Morales notes that her observation of her grandfather working in the grueling sun as a farm laborer made her realize the importance of hard work. Moreover, her grandparents impressed on her the value of the opportunities she had in America, thus encouraging her to place a premium on education. Morales also notes that family and religion are dominant factors in the Mexican-American culture, with many Mexican-American extended families attending Sunday mass together and spending Sunday afternoon as a family unit. Also, most Mexican-Americans hold grandparents and other elders in high regard.

The influence of culture on family law issues may be seen in the traditional role of Mexican women as the spouse predominantly responsible for the family unit. As a result, Mexican women have traditionally been expected to marry young, have children and stay home. Moreover, at the age of 15 Mexican-American girls are given a coming of age ball, called a quinceanera, after which they are expected to take on the responsibilities of womanhood. Yet no similar event is conducted for males, nor are similar expectations imposed on boys anywhere near as early. Morales notes that "[t]hese expectations often clash with the desires of the American way of life. More [Mexican-American] women are seeking higher education and careers outside the home. The goal to maintain balance between the home and a career can be very perplexing, especially when you add in the cultural expectations." Family law attorneys representing Mexican-American clients may be more effective if they understand these cultural and societal conflicts.

Morales describes a program she is familiar with that works with Mexican-American teen girls to help them build self esteem. She notes that these young girls often feel limited in their capabilities because of mental barriers born out of their culture. In one high school, these young women go through what is known as "Teen Court" where they learn the skills to make a decision, the value of making a decision and their ability to make decisions. Morales believes that such practice is important in helping Mexican-American young women remove the mental barriers to having a say in their own future.

Family law attorneys representing Mexican-American clients should be aware that acceptance by the extended family is often essential in the Mexican-American culture. That family's expectations often impose great responsibility on the women for family and childcare. Nonetheless, there is growing conflict between that cultural expectation and the removal of mental barriers to professional success for women that are at play in Mexican-American women's decision making as it relates to family law issues. Understanding of and respect for that tension by family lawyers is an essential component of meaningful representation of clients of Mexican descent. Morales notes that using mediation may be of great value in resolution of disputes in her community since mediation encourages the communication so sorely needed to address these underlying issues.

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Conclusion

In meeting our obligation to zealously represent our clients, it is of paramount importance that we understand, to the extent possible, our clients' unique cultural and other values and needs. This is attained by research, respectful inquiry and a healthy understanding of the individuality of everyone, no matter their culture. This article is just a taste of the many issues we family lawyers need to know we don't know. It is not my intent to exhaustively cover the values of any one group in this article. Rather, my hope is that this overview will encourage us all to pursue an increase in our cultural competence and to embrace the diversity that is an important element in our rich society.

Parenting Coordination: What Is It and How Social Workers Can Help

Ellen Craine, JD, LMSW, ACSW

Parenting coordination is seen as a hybrid method of alternative dispute resolution processes for high conflict families. It is hybrid because it uses a variety of dispute resolution techniques if done properly. Parenting Coordination utilizes mediation skills and when necessary requires the professional to make a recommendation to the Court as to how a matter should be handled regarding the minor children involved. In Michigan, there appears to be wide disparity as to how and when a parenting coordinator is used from Judge to Judge and from county to county. In addition, there seems to be little understanding as to what parenting coordination even is. Finally, there is very little consensus on any aspect of the practice, e.g., training, scope of service, authority, etc.

This article describes what parenting coordination is, who can/should be a parenting coordinator, and how social workers can help. Included is a draft of a proposed statute for the State of Michigan. In addition, legislation that has been passed in the following states: Colorado, Idaho, Louisiana, North Carolina, Oklahoma, Oregon, and Texas are provided for information purposes. Your comments are invited on either the proposed Michigan statute or any of the other statutes listed. In addition, your thoughts and comments are invited even if your state does not have a statue to share what is going on in all states around the country. The hope is to start the discussion on how social workers can help advocate for this necessary form of alternative dispute resolution for high conflict families.

What is Parenting Coordination?

> More than one million children each year are affected by divorce and family separation. Half of these children will be raised in families where parents remain in conflict. Many of these parents engage in ongoing litigation over their children for years. Children raised in an atmosphere of unrelenting conflict are four to five times as likely to grow up with serious emotional and behavioral difficulties. Not only are high-conflict cases damaging to innocent children, they require an inordinate amount of court time and mental health services. Consequently, high-conflict divorces pose grave concerns for mental health and legal professionals. In order to minimize the adverse effects of divorce on children and families, many parents are encouraged or court ordered to work with a parenting coordinator. www.parentingcoordinationcentral.com

According to the Association for Family Conciliation and Courts Guidelines for Parenting Coordination,

> Parenting Coordination is a child-focused alternative dispute resolution process in which a mental health or legal professional with mediation training and experience assists high conflict parents to implement their parenting plan by facilitating the resolution of their disputes in a timely manner, educating parents about children's needs, and with prior approval of the parties and/or the court, making decisions within the scope of the court order or appointment contract. AFCC Guidelines for Parenting Coordination May 2005.

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The Guidelines go on to say that,

> The 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. Parenting Coordination is a quasi-legal, mental health, alternative dispute resolution (ADR) process that combines assessment, education, case management, conflict management, and sometimes decision-making functions. AFCC Guidelines for Parenting Coordination May 2005.

Parenting Coordination is most frequently used with high conflict parents who have "demonstrated the long-term inability or unwillingness to make parenting decisions on their own, to comply with parenting agreements and orders, to reduce child-related conflicts, and to protect their children from the impact of that conflict." AFCC Guidelines for Parenting Coordination May 2005. The parenting coordinator makes recommendations and/or decisions for the parties therefore, he/she should be appointed by and be responsible to the Court.

Who Can/should be a Parenting Coordinator and ethical issues?

It is important to note that a Social Worker can be a Parenting Coordinator under appropriate circumstances and with the requisite training. To be a Parenting Coordinator, he/she should have training and experience in family mediation; be a licensed mental health professional; should have extensive practical experience in the profession with high conflict or litigating parent; should have training in the parenting coordinating process, family dynamics in separation and divorce, parenting coordination techniques, domestic violence and child maltreatment, and court specific parenting coordination procedures; shall acquire and maintain professional competence in the parenting coordination process. Guideline I, AFCC Guidelines for Parenting Coordination, p. 4, May 2005.

From experience, it is important to note that understanding of mental health issues is crucial for parenting coordinators. Frequently, one of the parents has a mental health issue that is getting in the way of him/her co-parenting and parenting the children effectively. The most common concern that I see is that of the Narcissistic Personality. In this scenario one of the parents believes that the other parent is doing things to alienate the children against him/her and is not able to look at their own behavior to determine how it could be affecting the parenting and/or co-parenting relationship. This same parent is behaving in a negligent manner regarding parenting time and communicates negatively about the situation or the other parent to the children. In addition, there are huge power and control issues in these cases and an understanding of domestic abuse, not just physical violence, but the verbal and emotional abuse that occurs just under the radar, is crucial for Parenting Coordinators.

There are 11 additional Guidelines for Parenting Coordination and they tend to parallel a lot of guidelines for the ethical practice of social work. It is important to note that if a social worker has acted as a therapist with any family member on a case, then he/she shall not act as a parenting coordinator on that same case and vice versa. However, "an effort towards resolving an issue (which may include therapeutic, mediation, educational, and negotiation skills) does not disqualify a PC from deciding an issue that remains unresolved after efforts of facilitation." AFCC Guidelines for Parenting Coordination, p. 6, May 2005.

A Parenting Coordinator serves as the following functions: assessment, educational, coordination/case management with other professionals and systems involved with the family, conflict management, decision-making, and SHALL NOT offer legal advice. AFCC Guidelines for Parenting Coordination, IV, pp. 8 and 9, May 2005.

There is a lot of additional information contained in the Guidelines that anyone who is serious about pursuing this as a career option, he/she should access the guidelines at www.afccnet.org.

Draft of Proposed Statute for Michigan

The following proposed statute was drafted by a task force of people who decided to take this up. To the best of this author's knowledge, nothing more has happened with this document. This author is not part of the task force who drafted this document.

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"MCL 722.27c Parent Coordination Statute
(after MCL 722.27a, parenting time and MCL 722.27b, grand parenting time)

1) A parenting coordinator is a person appointed by the court for a specified term to help implement the parenting time orders of the court, and to help resolve parenting disputes that fall within the scope of the parenting coordinator's appointment.

2) The court may enter an order appointing a parenting coordinator, if the parties and the parenting coordinator stipulate to the order. In a case involving domestic violence, the court shall ensure that the order provides adequate protection to the victim of domestic violence.

3) The order appointing a parenting coordinator shall include:

a) an acknowledgment that the parenting coordinator is neutral, that the parenting coordinator may have ex-parte communications with the parties, their attorneys, and third parties, that communications with the parenting coordinator are not privileged or confidential, and that by agreeing to the order, the parties are giving the parenting coordinator authority to make recommendations regarding disputes.

b) a specific duration of the appointment. The order must provide that the parenting coordinator may resign at any time due to nonpayment of their fee. The order may include provisions for extensions of the parenting coordinator's term by the consent of the parties for specific periods of time.

c) an explanation of the costs of the parenting coordinator, and each party's responsibility for those costs, including any required retainer and fees for any required court appearances. The order may include a provision allowing the parenting coordinator to allocate specific costs to one party for cause.

d) the scope of the parenting coordinator's duties. These may include:

a. Transportation and transfers of children between parents;

b. vacations and holidays: schedules and implementation;

c. daily routines;

d. activities and recreation;

e. discipline;

f. health care management, including: determining and recommending appropriate medical and mental health evaluation and treatment (including psychotherapy, substance abuse and domestic violence treatment and/or counseling, and parenting classes) for children and parents. The Parenting Coordinator shall designate whether any recommended counseling is or is not confidential. The Parenting Coordinator can recommend how any health care provider is chosen;

g. school related issues

h. alterations in the parenting schedule, so long as the basic time sharing arrangement is not changed by more than a specified number of days per month;

i. phase-n provision of court orders

j. participation by significant others, relatives, etc. in parenting time;

k. child care/day care/babysitting issues; and

l. Any other matters submitted to him/her jointly by the parties prior to the expiration of his/her term.

e) authorization for the parenting coordinator to have:

1. Reasonable access to the children;

2. Notice of all proceedings, including requests for examinations affecting the children;

3. Access to any therapist of any of the parties or children, and access to school, medical or activity records;

4. Copies of all evaluations and psychological test results performed on any child or any parent or custodian or guardian or other persons living in the parents' households, including Friend of the Report Reports, psychological evaluations, etc.

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5. Access to principal/teachers/teacher's aides of the children;
6. The right to interview the parties, attorneys or children in any combination, and to exclude any party or attorney from such an interview;
7. The right to interview or communicate with any other person the Parenting Coordinator deems relevant to resolve an issue before his/her or to provide information/ counsel to promote the best interests of the children.

f) The dispute resolution process that will be used by the parenting coordinator, explaining how the parenting coordinator will make recommendations on issues and the effect to be given to those recommendations. The process must ensure that both parties have an opportunity to be heard on issues under consideration by the parenting coordinator, and an opportunity to respond to relevant allegations against them before a recommendation is made. The parties may agree that on specific types of issues they must follow a parenting coordinator's recommendations until modified by the court.

4) The court may terminate the appointment of the parenting coordinator if the court finds that the appointment is no longer helpful to the court in resolving parenting disputes.

5) The parenting coordinator may resign at any time, with notice to the parties and to the court. If the court finds that a party has refused to pay their share of the parenting coordination costs as a means to force the parenting coordinator to resign, the court may use contempt sanctions to enforce payment of the parenting coordinator's fee.

6) The parenting coordinator is immune from civil liability for an injury to a person or damage to property if he or she is acting within the scope of his or her authority as parenting coordinator.

7) The parenting coordinator shall make his/her recommendations in writing and provide copies of the recommendation to the parties in the manner specified in the parenting coordination order. If a party attaches the recommendation to a motion or other filing, the court may read and consider the recommendation, but the recommendation is not evidence unless the parties so stipulate.

8) The court may allow the testimony of the parenting coordinator if the court finds the testimony useful to the resolution of a pending dispute. The parenting coordinator shall not testify regarding statements received from a child involved in the parenting coordination if the parenting coordinator believes the disclosure would damage the child's relationship with one of the parties.

9) The State Court Administrative Office shall develop standards for the qualifications and training of parenting coordinators. Parenting coordinators must complete the training within two years of the promulgation of these standards."

I invite comment on this draft. What do you like from this statute? What seems to be missing when you compare it to the AFCC guidelines? If you are in Michigan, I also invite you to join with me to draft a piece of legislation and work to advocate for sponsors of this legislation to help make it into law. A good place to start to build consensus on parenting coordination is to look at what AFCC and other national/international organizations have been saying about the field for the past six years.

Another place for Michigan to look, and other states wanting to have legislation or statutes around parenting to coordination, is to look at Statutes and Legislation that already exist.

Statutes in Other States

According to Parenting Coordination Central, the following states have legislation or statutes regarding parenting coordination:

Colorado: *Colorado Revised Statutes, Title 14, Section 1, 2005*

Records or testimony privileged except by agreement by the parties.

Requirements to order a PC: Parents who have failed to implement a parenting plan. Mediation is inappropriate or has failed. Best interests of the child. Consider domestic violence an impact on ability to engage in parenting coordination.

Authority of the PC: Can be combined with appoint of decision maker by agreement of the parties. Decision maker has binding authority to resolve disputes concerning children, including parenting time, disputed parental disputes and

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child support consistent with substantive intent of court order. Decisions are subject to de novo hearing.

REQUIRMENTS TO ORDER A PC: Parents who have failed to implement parenting plan. Mediation is inappropriate or has failed. Best interest of the child. Consider domestic violence impact on ability to engage in parenting coordination.

AUTHORITY OF THE PC: Can be combined with appoint of a decision maker by agreement of the parties. Decision maker has binding authority to resolve disputes concerning children, including parenting time, disputed parental disputes and child support consistent with substantive intent of court order. Decisions subject to de novo hearing.

Idaho: *Title 32 Domestic Relations, Chapter 7 Divorce Actions: 32-717D, Idaho Code: IRCP Rule 16(l), 2002*

Provides a minimum of one status report to the court every six months.

Requirements to order a PC: By agreement or appointment by the court.

Authority of the PC: No information

REQUIREMENTS TO ORDER A PC: By agreement or appointment by the court.

AUTHORITY OF THE PC: No information

Louisiana:

Distributes reports to the court, parties, and attorneys. Prepares interim and final reports as ordered by court and other reports when necessary. Shall not be called as a witness without prior court approval based on demonstrated need for testimony and evidence cannot be gathered from other sources.

REQUIREMENTS TO ORDER A PC: Good cause if previous child custody judgment entered other than ex parte order. The Court shall appoint with joint motion of the parties. They must be able to pay. There is exclusion for a history of family violence. The appointment term is for up to one year and is renewable.

AUTHORITY OF THE PC: If parties unable to reach agreement, PC may make recommendation in report to the court for resolution of dispute.

North Carolina:

Reports to court, parties and attorneys if order not in the best interest of the child or PC not qualified for issues. There is to be a written summary of each meeting and copies of written communication to parties and attorneys. Records and testimony subpoenaed only by presiding judge. Judge reviews records in camera and decides if records shall be released.

REQUIREMENTS TO ORDER A PC: By agreement or high conflict with best interest of child. The parties must be able to pay. PC selected from list maintained by court. Required appointment conferences for parties, attorneys and parenting coordinator.

AUTHORITY OF THE PC: This is limited by agreement if parties consent to appointment. May be authorized to decide parenting plan implementation issues not specifically governed by court order if parties unable to resolve, binding until court reviews.

Oklahoma:

PC files decisions and recommendations within 20 days. Parties can file objection to PC decisions and recommendations with in ten days

REQUIREMENTS TO ORDER A PC: By agreement or high conflict with best interest of the child. The parties must be able to pay.

AUTHORITY OF THE PC: May not make decisions on custody, visitation or support. The decision cannot modify any existing court order. The decision may not abrogate either parent's custodial or noncustodial rights.

Oregon:

No Information

REQUIREMENTS TO ORDER A PC: No information

AUTHORITY OF THE PC: No information

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Texas:

PARENTING COORDINATION = CONFIDENTIAL process. Records and testimony privileged. PC can only let court know if the process should continue.

PARENTING FACILITATION = NON-CONFIDENTIAL

REQUIREMENTS TO ORDER A PC:

PARENTING COORDINATION: Court's motion: High-conflict case or good cause and best interest of child OR agreement of parties. Family violence exclusion if verified by court hearing.

PARENTING FACILITATION: Court's motion: High-conflict case or good cause and best interest of child OR agreement of parties. Family violence exclusion if verified by court hearing.

AUTHORITY OF THE PC:

PARENTING COORDINATION: PC must comply with Ethical Guidelines for Mediators that are adotped by Supreme Court of Texas. Facilitate agreements but no authority to modify any order or make binding decisions. Submit agreements to court for approval.

PARENTING FACILITATION: PC may not modify any order, judgment or decree. Submit written reports and parties as ordered by Court. May include recommendations, but not include recommendations regarding conservatorship of or access to child. PC may be required to testify.

BOTH: If ordered by Court to settle issues with PC or PF, then he/she submits a written report.

Parenting Coordination Central has the following updates on the following states:

OKLAHOMA: The PC movement in Tulsa went from being one of the birth places to a grave yard. Court appointments have dropped by at least 75% in the past two years. The role of the PC has also been modified and reduced to little more than mediation without confidentiality. Two key factors have contributed to this very sad state of affairs. First, OK went from being the first state to pass a PC statute to being the first state to later determine the statute to be unconstitutional. As a result, the statute has been amended. Currently, the scope of practice has been limited to rendering only "minor and temporary" decisions. Second, divorce court judges typically transfer from the family court system within two to three years of their appointment.

William B. Berman, Ph.D.

March 2009

ILLINOIS: The domestic relationships of Cook County has recently passed a local rule (13.10) allowing Judges to order parents of high conflict to use parenting coordinators.

Sandra Crawford, Esquire

June 2009

FLORIDA: The deligent efforts of those committed to parenting coordination in Florida have finally paid off. An update on the new Florida law will be added as soon as the new law has been put on the books.

June 2009

NEW HAMPSHIRE AND MASSACHUETS: New Hampshire created House Bill 312 regarding parenting coordination. Legislation is pending in New Hampshire and Massachuets. Arizona, California, Kansas, New Mexico and Vermont have related statues or court rules. NHBAinfo@nhbar.org or www.nhbar/publications/display-news-issue.asp

Conclusion

This article has been an overview of Parenting Coordination. The practice of Parenting Coordination varies from jurisdiction to jurisdiction. In some jurisdictions, PC's have more authority than others. In some jurisdictions, PC's have more support from the Court's than others. Regardless of where PC's are used, the Guidelines from the AFCC discussed in

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this article should be followed. In addition, before considering Parenting Coordination as a career or as something to refer a client to, the social worker must be aware of how parenting coordination is practiced in his/her jurisdiction.

Again, I invite your comments on parenting coordination. I want to know how it is used in your jurisdiction. Please also share your thoughts/comments on the proposed statute for Michigan. As social workers, we can make a difference.

For more information on parenting coordination visit:

www.afccnet.org

www.parentingcoordinationcentral.com

To find a parenting coordinator in your area visit:

www.mediate.com

www.divorcenet.com

www.parentingcoordinationcentral.com

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Upcoming Mediation Trainings

General Civil Mediation Training

The following 40-hour mediation trainings have been approved by SCAO to fulfill the requirements of MCR 2.411(F)(2)(a). For more information, visit the SCAO Office of Dispute Resolution website, and select "Mediation Training" then "Upcoming Trainings": http://courts.mi.gov/Administration/SCAO/OfficesPrograms/ODR/Pages/Mediation-Training-Dates.aspx.

Traverse City: **April 14-18**

Training sponsored by Conflict Resolution Services

Contact: 231-941-5835 or conflictresolutionservices@hotmail.com

Lansing: **April 24, May 1, 8, 15, 22**
October 2, 8, 9, 29-30

Training sponsored by Resolution Services Center

Contact Linda Glover, 517-485-2274

Gaylord: **May 8-9, 15-17**

Training sponsored by Community Mediation Services

Contact: 989-732-1576 or info@mimediation.com

Bloomfield Hills: **May 1, 8, 15, 22, 20**
November 7, 14, 21, December 5, 12

Training sponsored by Oakland Mediation Center

Register online at www.mediation-omc.org or call 248-348-4280

Kalamazoo: **September 8, 10, 12, 13, 15**

Training sponsored by Dispute Resolution Services of Gryphon Place

Register online at www.gryphon.org or call 269-552-3434

Plymouth: **October 9-11, 31-November 1**

Training sponsored by Institute for Continuing Legal Education

Register online at www.icle.org, or call 1-877-229-4350.

Domestic Relations Mediation Training

The following 40-hour mediation trainings have been approved by SCAO to fulfill the requirements of MCR 3.216(G)(1)(b):

Lansing: **June 4-6, 25-27**

Training sponsored by Resolution Services Center

Contact Linda Glover, 517-485-2274

Bloomfield Hills: **September 11, 18, October 2, 9, 16, 23**

Training sponsored by Oakland Mediation Center

Register online at www.mediation-omc.org or call 248-348-4280 ext. 21

40-Hour Domestic Violence Screening Training

Bloomfield Hills: **October 2**

Training sponsored by Oakland Mediation Center

Register online at www.mediation-omc.org or call 248-348-4280 ext. 21

Advanced Mediation Training

Mediators listed on court rosters must complete eight hours of advanced mediation training every two years.

Kalamazoo: **April 25-26**

Elder Mediation Training

Trainer: Zena Zumeta

Training sponsored by Dispute Resolution Services of Gryphon Place

Register online at www.gryphon.org or call 269-552-3434

Petoskey: **May 16**

"Social Psychological Factors in Mediation"
Trainer: Stephen Tresidder

Training sponsored by Northern Community Mediation

Contact: Jane@NorthernMediation.org or call 231-487-1770

How to Find Mediation Trainings Offered in Michigan

Mediation trainings are regularly offered by various organizations around Michigan. Mediators who wish to apply for court mediator rosters must complete a 40-hour training approved by the State Court Administrative Office. Courts maintain separate rosters for general civil and domestic relations mediators, and there are separate 40-hour trainings for each. In addition, domestic relations mediators must complete an 8-hour course on domestic violence screening. Mediators listed on court rosters must complete eight hours of advanced mediation training every two years. MCR 2.411(F)(4)/3.216 (G)(3).

Most mediation trainings offered in Michigan are listed on the SCAO Office of Dispute Resolution web-site:

http://courts.mi.gov/Administration/SCAO/OfficesPrograms/ODR/Pages/Mediation-Training-Dates.aspx

CALL FOR NOMINATIONS FOR ADR SECTION AWARDS

The ADR Section is seeking nominations for the ADR Section Awards to be presented at the October 17-18, 2014, ADR Section Annual Meeting:

- Nanci S. Klein Award - presented to an individual, program, or entity in recognition of exemplary programs, initiatives, and leaders in the field of community dispute resolution.
- Distinguished Service Award - presented to an individual, program, or entity in recognition of significant contributions to the field of dispute resolution. Current Council members are ineligible to receive this award.

The deadline for submissions is June 1, 2014. Submissions may be sent to Robert Wright at bob@thepeacetalks.com.

SAVE THE DATES!

ADR Section 2014 Annual Meeting

Please join your ADR colleagues for the ADR Section 2014 Annual Meeting, featuring nationally renowned mediator, attorney, conflict coach, trainer, facilitator, writer and editor Cheryl Cutrona, Esq. Cheryl is an outstanding teacher and trainer. You will not want to miss this opportunity to have fun in Ann Arbor, network with colleagues and friends, build your skills and earn 8 hours of advanced mediator training!

WHEN: Friday, October 17, and Saturday, October 18, 2014

WHERE: Kensington Court Hotel, 610 Hilton Blvd, Ann Arbor, MI, near Briarwood Mall (800-344-7829 and 734-761-7800)

WHAT: Brief business meeting
8 hours of exciting Advanced Mediator Training
Cocktail reception
Awards banquet and dinner with colleagues and friends

Please mark your calendar today and save the date!

FREE* ADR SECTION LUNCH, LISTEN & LEARN SERIES

ADR & THE BUSINESS COURTS

What Litigators & Neutrals Must Know about ADR Practices in Michigan's New Business Courts

April 17, 2014 - Noon to 1:30

The Alternative Dispute Resolution Section of the State Bar of Michigan is pleased to announce another presentation in its Lunch, Listen & Learn teleseminar series: The next installment will be a 90-minute webinar on "ADR & THE BUSINESS COURTS: WHAT LITIGATORS AND NEUTRALS MUST KNOW ABOUT ADR PRACTICES IN MICHIGAN'S NEW BUSINESS COURTS."

Business Court best practices are evolving and will require more of ADR providers and practitioners than found in standard ADR plans. Learn what the Business Court judges are being taught about the use of ADR, the ADR tools they are being provided and what they will be expecting from litigators and neutrals.

This teleseminar will be offered on a call-in basis on April 17, 2014 from noon to 1:30 p.m. Further information about the presenters and registration will be coming soon.

* All current ADR Section Members may attend this teleseminar at no charge. Non-members will be charged $40, but will be automatically admitted to the ADR Section and eligible for free teleseminars in the future.