

## **High-Conflict Separated and Divorced Parents \***

Rarely do we see children of high-conflict parents, without co-occurring abuse of some kind, in the dependency courts. Sometimes, however, the conflict reaches a level of such extremes that the child welfare agency gets involved. Similarly, in some jurisdictions, there is a growing tendency to appoint a representative for the child in a very high-conflict family law matter. One piece of information to remember as a children's representative is that often the dependency case itself is the catalyst for the parents' separation and that sometimes there is a history of conflict but sometimes the high conflict begins with the separation instigated by the dependency case. Although we will refer to conflict between parents, it is often true in dependency cases that the high conflict can be between caregivers and parents, including between foster parents and parents. While that type of conflict changes the legal analysis, from the child's perspective, it can feel similar to conflict between parents. It is important to understand that the psychological dynamics that often contribute to parents being in very high conflict may also affect the children.

High-conflict parents are not all the same, but for many, they tend to have personality traits that contribute to exacerbating conflicts. They might have a relationship disorder, in which they interact in ways that contribute equally to disliking and not trusting each other. Others have individual personality dynamics that mimic personality disorders, or they actually have personality disorders. But we are not talking about diagnosis in this chapter. Instead, we are going to identify various personality

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\* Excerpted from Chap 7 in Stahl, RM and Stahl, PM, *Representing Children in Dependency and Family Court: Beyond the Law*. ABA Section of Family Law, 2018.

traits that increase the risk that one or both parents will act in ways that contribute to the very high conflict. Your job as a child's representative is not to diagnose; it is to notice whether certain traits existing in the family are damaging or mitigating damage to your client.

High-conflict couples often look at judicial orders as merely suggestions.<sup>1</sup> These parents are called "Angry Associates" or "Fiery Foes"<sup>2</sup> depending on the extent of their conflict. These types of parents have extreme difficulty following orders or resolving their parenting plan or financial issues. They often let one set of problems interfere with another set of problems. Many of these parents seem to hate each other more than they love their children. These parents make allegations of parental alienation (see Chapter 8), substance abuse, domestic violence (see Chapter 6), and other serious problems. Many of these parents have court orders that limit their ability to be together in the same place at the same time, even at their children's events. Such parents have extremely derogatory attitudes toward each other. Some of these parents merge their own feelings with those of their children and have very poor boundaries with their children. In many of these families, there is additional conflict instigated by extended family members and friends. Sometimes even therapists and attorneys get drawn into the conflicts. Many family law judges refer to these families as "frequent fliers," the 10%–15% of the families who take up 85%–90% of the court's time.

In many ways, it appears as though the life of the child stops while the arguments between the parents continue. For many of these families, every issue becomes a

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<sup>1</sup> Terence Bruniers, Contra Costa County Superior Court Judge, Address at View From the Bench: Luncheon speech to the Contra Costa Bar Association, Walnut Creek, CA (Jan. 12, 2000).

<sup>2</sup> CONSTANCE AHRONS, *WE'RE STILL FAMILY: WHAT GROWN CHILDREN HAVE TO SAY ABOUT THEIR PARENTS' DIVORCE* (HarperCollins 2004).

potential source of conflict. Sometimes this is related to the history of the relationship and the power dynamics between the parents. Sometimes one parent will not let go of the conflict because it keeps them “together” in their relationship (albeit a destructive one). Ultimately, both parents and children are significantly affected in a negative way because of this unresolved conflict.

### **Contribution of Personality Features**

Over the past thirty years, a growing body of literature has developed on personality styles, in particular, narcissistic and borderline styles.<sup>3</sup> Theodore Millon is a psychologist who researched personality disorders as well as personality traits and features that impact relationships rather than the individual. He has grouped personality disorders into types, one of which he refers to as Cluster B disorders: disorders that are conflict-inducing. Many family court professionals observe that in most high-conflict families, one or both parents exhibit either narcissistic, obsessive-compulsive, histrionic, paranoid, or borderline traits or features. Millon stated that personality disorders are caused not only by the internal personality structures but also by the social system in which these people interact. The court system, with its litigation and conflict, is an external system that may cause people who have such personality traits to act as if they have personality disorders. This is consistent with the commonly expressed phrase that “those in criminal court are bad people on their best behavior, but those in family court are good people on their worst behavior.”

Such parents may become rigid in their perception of each other and tend to deal with situations in their extremes. Many parents are polarized, viewing

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<sup>3</sup> See, e.g., THEODORE MILLON, DISORDERS OF PERSONALITY: DSM-IV AND BEYOND (Wiley-Interscience 1996); WILLIAM EDDY, HIGH CONFLICT PEOPLE IN LEGAL DISPUTES (Unhooked Books 2016).

themselves as all good and the other as all bad, and they externalize those thoughts and feelings onto their children, such that the children are at risk of becoming polarized. These parents focus on the traits in the other parent that reinforce this perception, and they approach each new conflict as verification of just how difficult the other parent is. These parents experience chronic externalization of blame, possessing little insight into their own role in the conflicts. They usually have little empathy for the impact of this conflict on their children. They routinely feel self-justified, believing their actions are best for their children. No matter how much helping professionals try to keep the focus on the child, these parents remain focused on the conflict.

Generally, those with personality disorders or traits that are similar to such disorders have many of the following characteristics:

- These people have an enduring pattern of thinking and behaviors that may be pervasive in many aspects of their life;
- They create problems for others and are generally disruptive, and they do not adapt well;
- They externalize issues, blame others, and have poor or limited insight into their own contribution to the problems;
- They may also show signs of depression, self-destructive behavior, aggressiveness, or brief psychotic episodes (or behaviors that appear psychotic);
- These parents tend to use emotional persuasion when in conflict, escalating their emotions, often becoming louder, blaming, and increasing the seriousness of their allegations;

- Many confuse emotional facts with actual facts. Such parents generate facts to support how they feel, and their emotions are often triggered by cognitive distortions. They believe “facts” that are not true, even though they feel as if they are true. This often leads to cognitive distortions, exaggerations, and overt fears. They tend toward poorly modulated or over-controlled emotional and behavioral responses;
- Parents with severe narcissistic personality disorders, or who act as if they have such disorders, lack empathy for their children and their ex-partner and have a strong sense of entitlement in court proceedings.

While these parents tend to be motivated by a diverse set of emotions, we believe most of them take such rather rigid positions out of fear, often the overwhelming fear that if they let down their defenses, the other parent will take advantage of them. Many parents say, “If I give in just this one time, she will always take advantage of me” or, “If I give him an inch, he’ll take a mile.” Sometimes this is accurate, and sometimes this is based on fear. Many parents fear losing a relationship with their child or fear being controlled by the other parent. For the more disturbed of these parents, giving in may represent a fear of loss of self. This rigidity ensures conflict. Because these families routinely go back to court, they are also afraid that any relaxing of their position might give the other parent an advantage in court. What is lost in the conflict are the children’s needs.

Another source of the fear is that winning or losing is so integrally tied to self-esteem. Parents with narcissistic traits fear losing custody and control lest they feel abandoned and depressed. Those with borderline traits must win in order to contain

their internal chaos and rage. While losing might mean different things to each parent, e.g., shame, loss, abandonment, rage, etc., the key ingredient is how *unbearable* such a loss will feel to the parent. Just as trauma is a subjective feeling, this feeling of loss is subjective to the parent who feels fearful of that loss. Judges and attorneys express their extreme frustration over these “frequent flyer” families. Many of these parents come back to court several times a year, and for some of these parents, a new issue arises just before a settlement is reached. Lacking a reasonable dispute resolution mechanism, these parents feel justified in taking each other to court and letting “the judge settle it,” despite their frustration and blame when the outcome is not acceptable to them.

Let us also remember that some parents are just deeply hurt or shamed by their family experiences, including the behaviors that have led to the separation and divorce. For example, a parent who discovers years of infidelity is likely to be deeply wounded, and all trust is shattered. On the other hand, some parents are ashamed by their own actions or by the divorce itself, and that shame may lead some parents to externalize blame in order to avoid experiencing these emotions.<sup>4</sup>

Regardless of the dynamics contributing to the conflict, for many of these parents, each issue is perceived as a new opportunity for victory and feared as a potential loss. These characterological personality dynamics, along with each parent’s righteous self-justification and fear, create this high level of conflict and perpetuation of the court battle. At the same time, away from the conflict, many of these parents appear concerned for their children’s needs and feelings and are capable of good parenting

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<sup>4</sup> Bruce Smyth & Lawrence Moloney, *Entrenched Postseparation Parenting Disputes: The Role of Interparental Hatred?* 55 FAM. C.T REV., 404 (2017).

skills. They may be nurturing and set reasonable limits with their children. They are frequently involved in their child's day-to-day activities, participate in schoolwork, and provide encouragement and support to their children. Even when they are cold, rigid, angry, and fearful toward the other parent, many of these parents can be loving, spontaneous, and supportive to their children. In the abstract, they understand the value of the child's relationship with the other parent, and they may even recognize that the conflict is problematic for their children. Despite this acknowledgment, it is difficult for them to relax their rigid positions and attitudes toward the other parent and extricate their child (and themselves) from the conflict.

For many high-conflict families, it seems that the parents' characterological personality dynamics manifest only in a relationship disorder with the other parent. They may be able to manage some of their chronic traits, including their narcissism, overreaction, rigidity, or anger, in their other relationships. They may be pleasant to coworkers, showing few pathological traits in their work environment. With their children, they may not personalize experiences or show signs of narcissistic injury. When seeing such parents, it is important to understand how (and whether) the vulnerabilities that exist in the parent-parent relationship manifest as well in the parent-child relationship. As a children's representative, it is important, therefore, to notice how the conflict affects the child as well as how the parent parents the child when not specifically involved in the conflict with the other parent. These can be difficult issues to parse out, but being curious and understanding how they may be different helps you ask the correct questions.

In contrast, the history of the conflict, the emotions of the divorce, and the fear of

letting go bring out the worst in these parents in interactions with each other. It appears the couple's relationship has been unable to withstand the previous love, the loss of that love, and the rejection and hurt that followed. Most people believe love and hate are opposites, but in reality, love and apathy are opposites. Love and hate contain energy, so when the love is lost in a relationship, it often can turn to a feeling of hate. In the newly formed divorce relationship, dysfunctional personality traits flourish, while in other relationships, including those with the children, healthier personality traits may abound. For those parents who are less disturbed, the pathological personality traits may surface only in the context of the conflicted relationship between the parents. Each parent's negative individual traits clash, and the conflicts continue. Left unchecked, these families return to court year after year to solve what might appear to the neutral observer to be the most minor issues. These families require strategies and interventions that assist them in taking care of their children and reducing their conflict. This will be discussed later in the chapter.

### **Contributions from Other Sources**

In addition to the personality features of the parents, several other potential sources contribute to the high-conflict nature of some parents. One potential source is the nature of litigation itself. The court system typically focuses on polarization and blame, which reinforces the polarization and blame that many parents feel in these situations. Unless judges are sensitive to these issues, they may reinforce some of the problems by criticizing both parents when only one is exacerbating most of the problems. Within that context, there is often limited encouragement of problem-solving skills, although more recently some jurisdictions are encouraging parents to participate



in specialized high-conflict programs designed to teach problem-solving skills,<sup>5</sup> as well as focusing these parents on the needs of the child.

At other times, some lawyers seem to hate each other as much or more than the parents do. They may personalize their client's feelings and needs. They ratchet up the conflict, sometimes for a variety of reasons. While we do not want to criticize the work done by good lawyers, even they know when they are faced with a lawyer who instigates and stirs up trouble between parents. We both have known many lawyers who will not take cases that involve a more difficult lawyer from their community. It is almost as if the lawyer has a personality disorder—or acts like he or she has one. As a children's representative, therefore, it is necessary to recognize when you believe the lawyer is pushing an agenda the client may not have. Both authors have witnessed situations where lawyers argue for something because that is what "the law" allows, but where the parents may want, and the children need, something different from the case.

Although therapists are important for your clients, they may contribute in a way that exacerbates problems because courts and parties often ask them to act in ways that are not within their scope of practice.<sup>6</sup> Sometimes a child's therapist who has never met one of the parents will send a letter to the judge regarding the alleged abuse that child has suffered and make recommendations for custody, particularly in situations where only one parent takes a child to a therapist. In many jurisdictions, that would be an ethical violation because the therapist is making such a recommendation without

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<FN><sup>5</sup> For example, in Los Angeles County, various private practitioners provide parent education programs geared specifically toward high-conflict parents. Co-parent Solutions, <https://www.coparentsolutions.com/parents-together-for-children> (last visited Oct. 31, 2017).

<FN><sup>6</sup> Lyn R. Greenberg et al., *Is the Child's Therapist Part of the Problem? What Judges, Attorneys, and Mental Health Professionals Need to Know About Court-related Treatment for Children*, 37 FAM. L.Q. 241 (2003), available at [www.lyngreenbergphd.com/wp-content/uploads/2008/04/child-therapist2.pdf](http://www.lyngreenbergphd.com/wp-content/uploads/2008/04/child-therapist2.pdf).

seeing one of the parents. Of course, this is different from the situation where a dependency court is seeking recommendations from the child's therapist about reunification, which will be discussed below.

Similarly, adult therapists often provide "supportive" therapy without any knowledge about how the supportive therapy allows their client to avoid taking personal responsibility for the client's contributions to the problem. In supportive therapy, when the client talks to the therapist, the therapist accepts and agrees with what the client says, without challenging the client about his behaviors and attitudes that may be exacerbating the problems. This problem can be exacerbated in dependency court where parents are ordered to participate in therapy and the therapists are not sufficiently trained to deal with these situations.

Another potential problem with parents involved in therapy is that therapists often do not receive information from the court and other parties, including child protection agencies. Therapists can work only with the information they have, and if the parents are the only ones providing information to the therapist, the therapist may be unable to provide anything other than a form of supportive therapy. Many therapists want nothing to do with the court process, which includes not wanting to receive or provide information. While we do not mean to say therapy should not be supportive,<sup>7</sup> we have found that supportive therapy alone, without some level of focus on the client's maladaptive behavior, can be counterproductive. This is especially true when the adult client has significant personality disorder traits.

The final source of conflict comes from friends and extended family who support

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<FN><sup>7</sup> Supportive therapy can be very beneficial in certain cases, but in cases of high conflict with underlying personality disorder traits, it can be counterproductive.

and encourage the “tribal warfare.”<sup>8</sup> Again, while it is appropriate to support a loved family member or friend, it is not helpful to do so in a way that exacerbates the family conflict. In some families, the conflict is quite entrenched and extends beyond just the divorcing parents. Like the Shakespearean Montague and Capulet families, these parents get armies of support for their battle against the other parent. In such families, relationships become increasingly fragmented, as children are not able to see some family members because of their role in the conflict. As a children’s representative, it can be helpful to ask about extended family members the child would like to see. Often this can provide information about the tribal warfare between the extended families, especially if your child client wants to see only family members on one side of the family.

Thus, in addition to the way in which personality traits and disorders often contribute to high conflict, the court system, attorneys, therapists, and family members and friends may all contribute to the level of conflict that may occur.

### **Impact of This Conflict on Children**

Essentially, the very big risks to children’s well-being when their parents separate lie in three primary areas: (1) poor parenting, (2) abandonment or absence of a parent, and (3) exposure to their parents’ high conflict. The emotional risks to children in a high-conflict family experience are many and include problems such as being confused, having loyalty conflicts, and potentially experiencing boundary problems in their relationships, becoming parentified, adultified, or alienated. All the issues associated with toxic stress and trauma continue to exist here, but we also discuss issues more

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<sup>8</sup> JANET R. JOHNSTON & LINDA E.G. CAMPBELL, *IMPASSES OF DIVORCE: THE DYNAMICS AND RESOLUTION OF FAMILY CONFLICT* (Free Press 1998).

specific to, although not isolated from, high conflict between parents.

Parentified children take care of their parents and siblings and lose track of their own feelings. In high-conflict families, this happens because parents lose track of the need to care for their children and instead focus on the conflict. The word *parentified* gets used in more appropriate and less appropriate ways. For example, there is no question that it is inappropriate for a 5-year-old child to be caring for a younger sibling and being constantly worried about how that sibling is doing. It is a different issue, however, when an older adolescent is concerned about an infant sibling. While at no time should a child be the full-time caretaker for another child, it is not necessarily a problem when older teens worry about their younger siblings in high-conflict situations. Often these situations require you, as the children's representative, to walk a thin line between helping your older clients understand it is not their job to care for their younger siblings while also recognizing it is completely natural and you are honoring their care for their younger siblings. There is a different problem when very young children are parentified, and that must be dealt with in therapy.

Adultified children serve as confidants and "best friends" to the parent with whom they are merging. Adultified children are more common in high-conflict families because the parents want their children to take their side, thereby treating them more as friends than as children. Alienated children take sides and have polarized feelings in their relationships with their parents. Alienated children will be discussed in the next chapter.

None of these reactions are healthy for the child. Children of high-conflict parents often experience strong loyalty conflicts. This can manifest where children sometimes tell each parent what they think the parent wants to hear. This will make it difficult to

know if what your client tells you is objectively truthful or more of a reaction to this conflict. It also means children's statements can change throughout the case. This can be one of the most difficult aspects of representing children—they can change positions, and sometimes it appears it is not done for a genuine reason, particularly in high-conflict cases. This can be difficult because children always have a reason for telling you what they tell you. Thus, the child's statements appear truthful even when they tell you information that appears to be opposing. This is why asking "why" is so important. Sometimes you can read between the lines, and sometimes you cannot.

Loyalty conflicts also manifest when children are confused and struggle to differentiate their own feelings and experiences from those of their parents, both of which can lead to increased risks of anxiety and low self-esteem. When children honestly do not understand what they are feeling, it can be beneficial as a children's representative to ask different questions, exploring various aspects of the child's life and experiences. While many people think it is appropriate, and even required, that the children's representative ask the child with whom they want to live, in high-conflict cases especially, this question can be damaging to children. Instead, you can ask questions about each home, about friends at each home, and about which parent supports or lives closer to children's extracurricular activities, for example. Asking these questions instead of putting the child directly in the middle of the conflict can help ease some, although likely not all, of these loyalty and anxiety issues. Later in the chapter we will address therapeutic interventions designed to help such children deal with their high-conflict parents.

Finally, it is imperative to help the child understand it is the court who makes the

decisions. Neither you, the child, nor the parents, make the final decision in a case unless parents reach a stipulated agreement before the conclusion of a hearing or trial. Only the judge can do that, and the judge has multiple factors she must consider in making her decision. Reminding children of this can help alleviate some of their concern about being stuck in the middle of their parents' (or caregivers') conflict, although as noted above, it is unlikely to reduce all the conflict they feel. While many children still will take on that responsibility, your reminder to them of what the judge's role is and what your role is can help alleviate some of their anxiety.

### **Recommended Interventions for High-Conflict Families**

Recognizing that high-conflict families are by themselves a unique category of cases and recognizing that the impact of high conflict can be quite problematic for children, you can make a difference by advocating for interventions that might reduce the impact of this conflict on your client. There are typically four main goals for these families: (1) therapeutic healing and problem solving; (2) structured parenting time arrangements; (3) the use of a neutral decision maker, often referred to as a parenting coordinator; and (4) having the parents engage in parallel parenting rather than attempting to force cooperative co-parenting. This section addresses these issues.

### ***Therapy***

In those jurisdictions where it is legally authorized, courts commonly make orders for therapy at the conclusion of litigation in family law cases. In dependency cases, of course, therapy is often a requirement of the case plan. With high-conflict families, these orders must relate to the psychological and personality issues identified in the

case. For high-conflict parents, this might include something like the following:<sup>9</sup>

- Providing therapy or counseling that encourages parents to develop empathy and understanding of their children's feelings and needs;
- Teaching parents to differentiate between their own thoughts, feelings, and needs and those of their children;
- Teaching parents to take personal responsibility;
- Teaching parents to consider alternative solutions and improving problem-solving skills; and
- Teaching parents communication skills.

Although it is always important for a therapist to be supportive with his client, supportive therapy does not work with high-conflict parents. It is critical to confront these parents therapeutically to focus them on the issues that are contributing to the conflicts with their ex-partner and negatively affecting your client.

For your client, therapy or counseling is likely needed to help him learn to cope. Children cope best when they learn active skills for coping, such as understanding their feelings, learning to express their feelings in a healthy way, and learning to separate their feelings from the loyalty conflicts and the conflicts of their parents.<sup>10</sup> To the extent children feel caught in the middle, or are used as spies or messengers of communication, such therapy can help them learn to get out of the middle and cope more successfully with the tension of their parents' divorce. Note that these goals are

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<sup>9</sup> Of course, the specifics of the order will vary depending on the nature of each parent's critical issues and amenability for interventions.

<sup>10</sup> See e.g., Laurie Fields & Ronald J. Prinz, *Coping and Adjustment During Childhood and Adolescence*, 17 *CLINICAL PSYCHOL. REV.* 937 (1997); Katherine H. Shelton & Gordon T. Harold, *Marital Conflict and Children's Adjustment: The Mediating and Moderating Role of Children's Coping Strategies*, 16 *SOCIAL DEVELOPMENT* 497 (2007).

very different from those specific to trauma. These goals are specific to resolving the feeling of being in the middle of a high-conflict situation, particularly when the child recognizes he is a by-product of the two parents. The trauma resulting from exposure to the high conflict must also be considered and addressed, but the issues we address here, different from the issues identified in Chapter 4, are necessary in addition to those related specifically to the trauma of the high conflict.

### ***Structured Recommendations***

Another important intervention for these families is providing structured recommendations. It is not uncommon for parents to have litigated their residential schedule, often arguing about as little as fifteen minutes between what each parent wants. Many parents cannot agree on what a court order states, and some resort to calling the police regularly to resolving their disputes. Still others can manage the regular routines of caring for the children during the school year but cannot resolve requests for vacations, for example, and cannot manage the start and end times of holidays. Whatever the issues in the high-conflict family with whom you are working, and regardless of how much stress it might be causing you, the parents' attorneys and the judge note that its toll is highest in the children.

Structured recommendations may help reduce the stress on everyone. The more specific the court order, the more parents know the rules and help the neutral decision maker (next section) enforce the rules. This is just as true in dependency as in family law. If one of the reasons the case is before the dependency judge is because of high conflict between the parents, it is imperative the dependency court provide the same structure for the family as a family court would.



Some families have a rather vague schedule outlined in their parenting plan order stating, for example, “The children are to be with [one parent] every Wednesday overnight and every other weekend. Each parent has the opportunity for a summer vacation in each calendar year.” Some are even vaguer and state that “[one parent] has reasonable rights of access.” Some even say, “Visitation to be agreed upon by the parties.” While such phrases may be acceptable for many low-conflict and medium-conflict families that are flexible and manage their conflicts, they will not work for high-conflict parents. High-conflict parents argue about the start and end times of the overnight, how to define the times of the weekend, the length and times of vacations, and how to resolve the likely occurrence that each parent wants the same vacation dates. Court orders that address these and other issues might look like the following:<sup>11</sup>

- The children are to be with [one parent] from his pickup of the children at school at the end of their school day each Wednesday until returning them to school the following Thursday morning. [That parent] will have the children every other weekend (with the start date noted so that an observer can easily determine whose weekend is whose) beginning at [that parent’s] pickup at school on Friday afternoon until return of the children to school on Monday morning.
- In the event of a three-day holiday weekend in which the children are off school either Friday or Monday, [that parent’s] time with the children will extend to include that additional day; for example, [that parent] will return the children to school on Tuesday morning following a Monday holiday.

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<sup>11</sup> Although this schedule provides one parent with parenting time only on Wednesdays and every other weekend, we are not suggesting that is an appropriate parenting plan in any particular case. This is simply a way to outline effective strategies for writing parenting plans, and we chose one that is not overly simple or overly complicated to make a point about the need for specificity, not the appropriateness of this specific parenting arrangement.

- In the event there is no school on an exchange day, [that parent] will pick up the children from [the other parent's] home at 3:00 p.m., and will drop the children off at [other parent's] home at 8:30 a.m.
- In addition, it is recommended that each parent have the children for up to fourteen consecutive days for a vacation in each calendar year. Such vacations can occur only during the summer school break, except as outlined in the holiday schedule below.
- Requests for vacation must be made by February 28 of each calendar year for the following summer, and in the event there is a dispute over requested dates, Father has first choice in even-numbered years and Mother has first choice in odd-numbered years.

Another way to maintain a structured schedule is to develop a clear holiday plan.

Certainly, it will depend on the age of the children and the family expectations. Schools in different parts of the country are on different schedules as well. An example of a structured holiday and vacation schedule is as follows:

For holidays, birthdays, and school vacations, the following is ordered:

- Thanksgiving break to be with Father in all odd-numbered years and Mother in all even-numbered years.
- An equal split of the Christmas breaks from school, switching at 1:00 p.m.  
Christmas Day.
- In all odd-numbered years, Mother to have the first half of the Christmas vacation. In all even-numbered years, Mother to have the second half of the Christmas vacation. The intent of this order is that each parent will have one-half

of the break. In the event the vacation does not split evenly, the parenting coordinator will have the authority to make adjustments to the holiday schedule in a given year.

- Spring break to be treated as a whole, including the weekend days, with Father having the children in all odd-numbered years and Mother having the children in all even-numbered years.
- The children to be with Father on his birthday from 4:00 p.m.–8:00 p.m. (unless it naturally falls on his time) and for the entire Father’s Day weekend and Mother on her birthday from 4:00 p.m.– 8:00 p.m. (unless it naturally falls on her time) and the entire Mother’s Day weekend. In addition, the children’s birthdays should be alternated in the same fashion.

As shown in this lengthy and detailed order, less room exists for each parent to manipulate or feel manipulated by the other. The rules are clear. If there is no parenting coordinator, as is often the case because of a lack of finances, the parents know exactly what the parenting plan should be, and if either of them tries to go to court or keep the children at a time the children are not supposed to be with that parent, the court will find it easier to resolve the dispute. Thus, it helps keep these families out of court, although it does not preclude them from going to court.

In the event of a dispute when there is a parenting coordinator, it will be relatively easy for the parenting coordinator to resolve. The order should also include a provision that the parenting coordinator can adjust or modify the parenting schedule in the event of certain situations, such as a family emergency, a special longer vacation, the children’s summer schedule, or the needs of one or more family members. Typically,

such adjustments are put in writing so that there is no dispute about how or why the adjustment was made.

Flexibility does not work for these high-conflict families unless a dispute resolution mechanism such as a parenting coordinator is in place because flexibility is a breeding ground for new conflict. If there are insufficient finances for a parenting coordinator, then orders must be even more specific than when a parenting coordinator is involved. Parents can feel more comfortable with a structured order if it can be adjusted in the event a specific need arises. The above is only one example of the areas in which concrete and specific orders can be made, and to the extent you can assist the parents' attorneys and the court in reaching a structured order, you help reduce conflict and thus assist your client. It is also important to add issues that are important to your child client. If your client plays football, include information about who can attend games and practices. If your client is on a traveling team of some variety, make sure there are provisions for those trips. These parenting plans are designed to help the child have the best possible life, not for the parents to get a certain amount of time with a child.

As noted above, it is just as important to have these specific orders in a dependency case as it is in a family law case. This is often where the chasm between family and dependency law arises; dependency lawyers say specific parenting plans are the purview of the family court, and if the parents have a dispute, they can solve it in family court. Unfortunately, that neither solves the issue for your client nor provides a basis for minimizing the disagreement between the parties. Ultimately, the court will resolve these issues with clear and carefully written orders.

### ***Neutral Decision Making (Parenting Coordinator)***<sup>12</sup>

In many jurisdictions, courts use attorneys or mental health practitioners as neutral decision makers to assist families in such day-to-day disputes. These “frequent flyers” strain the resources of the courts, and the court system is incapable of handling the types or frequency of problems these families bring. In recent years, courts have used the assistance of a decision maker who acts on behalf of the best interests of the children. This person is empowered by the family and the court to act on behalf of the children to resolve conflicts in an expeditious manner. If neither parent has control, both can relax their fear of being taken advantage of by the other. While each parent may become frustrated periodically with the decisions of the neutral decision maker, each parent usually trusts that person more than the other parent.

An example of an order for neutral decision making might be the following:

- The parents have agreed, and this court orders by stipulation of the parties, the appointment of a parenting coordinator to assist the parties in resolving their disputes. This parenting coordinator has decision-making authority in all day-to-day areas except for significant changes in the parenting time.
- The parenting coordinator has the authority to settle disputes in the areas of child care, after-school activities, times and locations of exchanges, disputes about vacations, therapy for the child, and each parent’s participation in the child’s events.
- Both parents are discouraged from engaging in conflict within earshot of their

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<FN><sup>12</sup> Parenting coordinators also may be called parenting plan coordinators and special masters. We use the more general term of *parenting coordinator*.

their child and are directed to use the parenting coordinator to resolve their disputes. Both parents should refrain from calling the police except in an emergency without first discussing their concern with the parenting coordinator.

- The parenting coordinator has the authority to alter the basic parenting time if he or she deems that one parent is causing significant problems for the child, although the parents have the right to request this court reject the parenting coordinator's recommendation. Also, at a minimum, the parents should meet with the parenting coordinator once per month to discuss their child and the child's needs and to work toward preventing future problems from occurring.

There are three primary benefits of this role: (1) helping families more quickly resolve their differences, (2) relieving the courts of some of their most difficult cases, and (3) helping families with very young children manage the nuances of integrating changing developmental needs of the child into their parenting plan. Also, note that the use of a parenting coordinator is often less expensive than the use of two attorneys and the time and costs of going to court.

The major task of the parenting coordinator is to make decisions that help a family stay out of court and keep their children out of the middle of the conflict. Parenting coordinators need to be decisive. Just as young children often have difficulty sharing, divorced parents often have difficulty sharing their children. While the parenting coordinator needs to understand the parents' position and feelings, it is more important for the parenting coordinator to make decisions that are in the child's best interests,

without taking a lot of time.<sup>13</sup> A good resource regarding parenting coordination is *Guidelines for Parenting Coordination*, which is published by the AFCC.<sup>14</sup>

A parenting coordinator must make major decisions on a regular and consistent basis. For most mental health practitioners, quick decision making is the most difficult task of being a parenting coordinator, which is why it may be helpful to have an attorney serve as a parenting coordinator. Someone who accepts this task must recognize that the child relies on the parenting coordinator to make decisions on the child's behalf. When the parenting coordinator keeps the focus on meeting the needs of the child, it becomes easier to make quick decisions that support and promote the child's healthy adjustment.

The role of the parenting coordinator is a multifaceted one<sup>15</sup> in which he is part detective (as parents describe their different stories, the parenting coordinator tries to understand the "whole truth"), part educator (the parenting coordinator helps parents learn to share their children, understand each child's developmental needs, resolve problems, and move on with their lives following the divorce), part mental health professional (the parenting coordinator understands the parents' and child's feelings and attitudes), part judge (the parenting coordinator makes timely decisions), and part advocate for the children (children's needs are the parenting coordinator's first priority). Parenting coordinators may talk with other professionals and may need to meet with the

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<sup>13</sup> See, e.g., Matthew J. Sullivan, *Ethical, Legal, and Professional Practice Issues Involved in Acting as a Psychologist Parent Coordinator in Child Custody Cases*, 42 FAM. C.T. REV. 576 (2004); Susan Boyan & Ann Marie Termini, *THE PSYCHOTHERAPIST AS PARENT COORDINATOR IN HIGH-CONFLICT DIVORCE: STRATEGIES AND TECHNIQUES* (Haworth Clinical Practice Press 2005); Philip M. Stahl, *The Use of Special Masters in High conflict Divorce*, 28 CAL. PSYCHOLOGIST 29 (1995).

<sup>14</sup> Association of Family and Conciliation Courts, AFCC Task Force on Parenting Coordination, *Guidelines for Parenting Coordination* (2005), available at <https://www.afccnet.org/portals/0/afccguidelinesforparentingcoordinationnew.pdf>.

<sup>15</sup> Stahl, *supra* note 206.

children to carry out their work. The task is complex because of the ongoing conflict between the parents.

The scope of the parenting coordinator must be defined by court order. In most jurisdictions, parenting coordinators cannot be ordered by the court.<sup>16</sup> Instead, this court-appointed role is stipulated by the parents and grants the parenting coordinator very specific and usually limited roles because courts cannot delegate judicial tasks to nonjudicial officers. With that in mind, parenting coordinators generally are granted the authority to make limited decisions about schedules, overnight access, choice of schools, extracurricular activities, troubles at transfers, holiday scheduling, parenting differences, health issues, children's therapy, and problematic behaviors on the part of one or both parents. The parenting coordinator needs to understand the impact on the children before making decisions in any of these areas.

The work of parenting coordinators is very challenging. Parents who require parenting coordinators are engaged in destructive conflict, tend to have limited psychological resources and coping skills, and tend to thrive on chaos in their lives. The parenting coordinator requires time management skills that some mental health professionals may find difficult to do. Phil has heard fewer concerns with time management when an attorney is the parenting coordinator. However, being a parenting coordinator requires training in child development and conflict resolution, and attorneys sometimes have more problems with those aspects of the job.

Because many of these parents are highly litigious and vehemently express their displeasure over decisions, the job requires the mental toughness of a judge and the

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<sup>16</sup> *Ruisi v. Thieriot*, 53 CAL. APP. 4th 1197 (1997).



empathy of a psychologist to withstand the pressures that some parents apply. While this might be difficult for some, we know many parenting coordinators who find gratification in being able to support children in these families while helping parents reduce the intensity of their conflict.

It is important to note that you might be asked to serve as a parenting coordinator in some of these cases (not one in which you are the child's representative, of course) to help parents in their conflict resolution. The issues in this book about representing children are similar to the issues you would have to address as a parenting coordinator.

### ***Parallel Parenting***

A fourth intervention involves parallel parenting. Psychologists describe young children who play next to each other but interact in limited ways with each other to be in "parallel play." In the same way, parents who parent their children at different times, but who have little or no direct interaction, are engaged in parallel parenting. Although much of the separated parenting literature focuses on the goal of cooperative co-parenting, in which parents learn to communicate and work with each other to raise their children in a cooperative fashion, high-conflict families usually fail at this task. Each parent usually thinks his or her style is the only way to parent and is often quite critical of the other. Interactions stimulate conflict that harms children.

The goal of parallel parenting is to reduce the level of conflict and ensure the tasks of parenting are accomplished by one or both parents. It is important for parents, in conjunction with a neutral decision maker, to specify which parent is responsible for various parenting tasks. Parents develop a parenting plan that identifies how each parent will participate in the child's extracurricular activities, help with schoolwork, and

take care of medical needs, for example. Plans are developed to ensure that parents communicate as little as possible with the expectation of less conflict. E-mails and texts may be used when conflict is high and are usually monitored by the parenting coordinator to ensure civility. Each parent is encouraged to develop his or her separate routine and structure. With such a plan, for example, the child will not be exposed to both parents attending the same field trip and making things miserable with their conflict. Although some high-conflict parents cannot share parenting,<sup>17</sup> parallel parenting may facilitate its success.

Parallel parenting allows high-conflict parents the freedom to parent separately. Working with the neutral decision maker allows them to develop the skills to co-parent and use them later in raising their children, after the conflicts have diminished. To help these parents disengage and then learn to work together, it can be helpful for the neutral decision maker to meet with the parents periodically to develop a schedule of the child's activities and each parent's participation in those activities. The parenting coordinator can focus on the process of parallel parenting and help parents to disengage from conflict. Together they can develop routines for the child and help coordinate a similar routine in each household, schedule times for phone calls between children and the other parent, and assist each parent in doing those tasks that each parent does best. With this process, neither parent is a winner or loser, and the child benefits from separate and parallel interaction with both parents and the reduced level of conflict to which she is exposed. Once a neutral decision maker is in place and the process of parallel parenting is ensured, parents can detach from each other and

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<sup>17</sup> See e.g., Janet R. Johnston, *High-Conflict Divorce*, 4 FUTURE OF CHILD. 165 (1994); PHILIP M. STAHL, PARENTING AFTER DIVORCE: RESOLVING CONFLICTS AND MEETING YOUR CHILDREN'S NEEDS (Impact Publishers 2007) (2000).

reduce the intensity of their conflict. Sometimes this task of parallel parenting can be very difficult, and not all families can afford a parenting coordinator. Perhaps the parents can work with a co-parent counselor who in such cases is considered a parallel parent counselor. Others will work periodically with a mediator to keep them focused on parallel parenting. Still others may use you, as the child's representative, to facilitate the parallel parenting. Phil has known courts to order that parents read his book<sup>18</sup> so that they have an agreed-upon foundation for how to parallel parent. Of course, like so many issues in high-conflict divorces, parents with better financial resources have the opportunity for assistance compared with those who have fewer financial resources.

For parallel parenting to work, certain skills are required by the parents in families.<sup>19</sup> The first step of parallel parenting is "disengagement." These parents need to avoid communication about minor things in the child's life. They need to avoid telling each other how to parent or criticizing each other. Instead, only limited and basic information is provided, and all of it is done via e-mail, text, or letter. Parents engaged in parallel parenting communicate orally or leave voice messages only in emergencies when no other method of communication is sufficient to deal with the emergency. In their written communication, parents need to be encouraged to be factual and concise and businesslike, avoid sarcasm and impulsive emotions, and not share the communications with the children. Parents who parallel parent must support different styles of parenting and accept more than one "right way" to parent in order to avoid conflict.

When engaged in parallel parenting, each parent needs to be less rigid and more

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<sup>18</sup> *Id.* The appendix from PAD titled Cooperative Co-Parenting vs. Parallel Parenting is on the website.

<sup>19</sup> *Id.*

accepting of the child's other parent. It is important to note that many children of separated parents adjust well to two very different homes. Ultimately, parents who parallel parent can learn to parent differently and continue to raise their children in a healthy way.

### **The Use of a Parent Communication Notebook**

Parents who are engaged in parallel parenting do not communicate very well with each other, but they still need to communicate about the day-to-day issues with their children, especially when children are under age 5. The parent communication notebook should include highlights of the very young child's emotions and behaviors during the time the child is with each parent.

The notebook is transitioned between parents during the exchange of the child. When children are under age 2, the notebook should have information about the child's health, feeding, sleeping patterns, and soothing. It should include information about the child's emerging language and the child's mood, including what upsets the child and what helps soothe the child. Ultimately, the notebook should include all relevant information about the child's day-to-day functioning and needs. In order to ensure that such communication goes well, it may need to be monitored by the parenting coordinator, just like other written communication between high-conflict parents. It can also be electronic and use one of the resources in the online resource guide specifically designed to help parents communicate appropriately.