

ADR Developments in Collaborative Law, Parenting Coordination, and Child Protection Mediation

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By Doug Van Epps, Director, Office of Dispute Resolution

Three new initiatives signal increased interest in expanding the array of ADR options available to parties for resolving their conflicts in domestic relations and child protection cases, two of which are prompted by recently enacted legislation.

First, the Collaborative Law Rules Committee has been convened to provide recommendations to the Michigan Supreme Court for adopting a new court rule to guide the development of collaborative law in Michigan. The Uniform Collaborative Law Act (2014 PA 159; MCL 691.1331-691.1354) outlines a process through which parties retain attorneys for the sole purpose of mutually negotiating a consent judgment without using any adversarial court process. In fact, under the terms of their engagement of collaborative lawyers, should any party find it necessary to go to court over a contested matter, the lawyers automatically remove themselves from the case, and the case would move forward in the traditional manner. Both parties must agree to use this process; it cannot be ordered by a court.

The notion of using a problem-solving approach in domestic relations actions, already widely used in many types of cases, is expected to increase as more attorneys are trained in the process. It is also likely that parties in general civil cases will explore whether a problem-solving approach to their dispute may better suit their needs than a traditional adversarial process.

Related to the topic of problem solving outside of the courtroom, 2014 PA 526 (MCL 722.27c) created a structure for the practice of parenting coordination in the state. A parenting coordinator is someone appointed by a court for a specific period of time to help implement parenting time orders and to help resolve disputes that fall within the scope of the court's order of appointment. Just as with collaborative law, a parenting coordinator can only be appointed by agreement of the parties. The job of the parenting coordinator is to make fairly immediate recommendations regarding a variety of issues parents may not agree on, including

transportation and transfers of children, vacation and holiday schedules, discipline, health care management, and other areas outlined in the statute.

Parenting coordinators are most typically engaged in high-conflict divorces, and their ability to quickly make recommendations without the need for a formal complaint filed in the Friend of the Court makes this process particularly helpful where parents need routine and quick assistance in resolving disputes. The SCAO's Friend of the Court Bureau has convened a committee that will determine whether or not to recommend that the Michigan Supreme Court adopt any new court rules or amendments to guide the development of this practice in the state.

Finally, the SCAO has convened a Child Protection Mediation Court Rules Committee to develop court rule proposals for codifying best practices in mediating child protection cases.

Child protection mediation is not new. For over 15 years, a number of courts have been providing mediation in child abuse and neglect cases. The idea is fairly simple: instead of all parties appearing on the day of a hearing and meeting in separate rooms to discuss reunification objectives, services, and activities, these discussions instead take place with all parties at a single table, with the conversation facilitated by a trained mediator. Parents, GALs, attorneys, social workers, assistant prosecutors, and other interested parties all hear the same discussion at the same time, and all work toward developing a reunification plan that the parents can realistically work toward achieving.

In this setting, parties reach agreement in approximately 80 percent of the cases. A 2006 study of the service by the Michigan State University School of Social Work identified numerous positive outcomes, chief of which was that a mediator reduced the amount of time a child was in an impermanent setting by approximately 12 months.

With judges in over 20 jurisdictions recently expressing interest in also offering these services, the SCAO determined that future services might be best developed through court rule guidance on such topics as confidentiality, scheduling, party attendance, and other topics.

All three initiatives are expected to issue recommendations for rule proposals in 2017.

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