

## **Intermittent Evaluative Mediation With Enduring, Postdivorce Conflict**

DANIEL B. PICKAR

*Independent Practice and Department of Child and Family Psychiatry,  
Kaiser Permanente Medical Center, Santa Rosa, California*

*Pickar and Kahn (2011) recently presented a new alternative dispute resolution method for resolving child custody disputes. The settlement-focused parenting plan consultation (SFPPC) is a form of evaluative mediation conducted by a parenting plan consultant (PPC), who possesses the combined expertise of a mediator and child custody evaluator. The SFPPC was formerly presented as a single course of evaluative mediation. Given the changes that typically occur in the life cycle of a separated or divorced family, this article describes the expansion of the PPC role to provide intermittent evaluative mediation with families over time, as parenting plans may need modification when family circumstances or the developmental needs of the children change. This approach is tailored for the reality that “enduring conflict” is normative for a majority of families, who need assistance in engaging constructively in such conflict over time. Case examples of the intermittent use of a PPC are offered, and the unique skills that a child custody evaluator, also trained in mediation, can bring to families who want to resolve their child custody disputes outside of court are further elucidated.*

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Family law courts are increasingly overburdened with divorce and child custody cases, which only underscores the need for the further development of cost effective, alternate dispute resolution approaches, geared toward

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Address correspondence to Daniel B. Pickar, Ph.D., 1101 College Avenue, Suite 230, Santa Rosa, CA 95404. E-mail: dpickar@sbcglobal.net

assisting families to resolve their child custody disputes outside of the courtroom. Dispute resolution approaches such as court-based family mediation services, child custody evaluation, and parenting coordination are methods utilized within the court system to aid in judicial decision making, resolve custody disputes, and manage high-conflict cases. The two most common alternative dispute resolution (ADR) methods currently in use designed to assist families resolve their child custody disputes outside the courtroom are private mediation and collaborative practice. These methods are based on the hallmark mediation principles of self-determination and voluntary resolution of family disputes, which hopefully leads divorcing partners to experience a greater degree of autonomy than is typically encountered in the court system. The use of parenting coordinators (Sullivan, 2008) has been most helpful in providing out-of-court management of high-conflict cases, thereby assisting families by monitoring parenting plans, providing education, and facilitating resolution of disputes. Court-appointed, forensic mental health evaluation continues to be necessary in some cases when the court needs information regarding the safety of children in situations of physical or sexual abuse, domestic violence, severe psychiatric dysfunction or parental substance abuse, or extreme forms of alienation. Child custody evaluations and parenting coordination are not truly ADR methods though: Following a child custody evaluation, decision-making is often ultimately made by a judge; in the case of parenting coordination, the PC has the authority to make court orders in many instances, over the objection of one or both parents.

Emery, Otto, and Donahue (2005), in their critique of child custody evaluations, urged that the best solution to child custody disputes was to encourage parents to reach their own decisions about rearing the children after a separation and stated, "We believe that encouraging private settlement is the best way to promote children's mental health in separation and divorce" (p. 20). Supporting this viewpoint, Shaw (2010), in a recent meta-analytic study of divorce mediation, found that mediation has been shown quantitatively to be superior to litigation in dealing with divorce cases. Shaw's study found that mediation had more positive effects than litigation on coparenting relationships and on increasing the parent's understanding of the children's needs, and that mediation participants were more emotionally satisfied than litigation participants. Thus, mediation participants showed greater satisfaction with process and outcome. These findings are consistent with previous research findings on mediation, which revealed increased flexibility in changing custody arrangements in families who mediated, versus those who litigated custody (Emery, Laumann-Billings, Waldron, Sbarra, & Dillon, 2001). It is well known that a child's adjustment to divorce is positively impacted by a cooperative and supportive relationship between parents during and after divorce, and mediation has a far greater likelihood of producing such a result than litigation.

In the field of family law, divorce mediation and child custody evaluation (CCE) are two entirely distinct processes. For example, the Association

of Family and Conciliation Courts (AFCC) Model Standards of Practice for Child Custody Evaluation (2007) clearly indicate that evaluators should be not be attempting to mediate when conducting an evaluation, as this raises considerable ethical issues (Gould & Martindale, 2007). Recently however, Pickar and Kahn (2011) presented a hybrid child custody mediation model, the settlement-focused parenting plan consultation (SFPPC), which utilizes in part, forensically-based CCE procedures, in an effort to conduct what has been described as “evaluative mediation” (Lowry, 2004; Riskin, 1996). While purist mediators may find this model at variance with the primary tenets of mediation, it is truly an ADR procedure that ultimately leaves decision-making to the parents. In contrast to more traditional forms of mediation though (i.e., facilitative or transformative), evaluative mediation or the SFPPC is more directive, as the mediator or *parenting plan consultant* (PPC) helps the parents resolve a child custody dispute not only by facilitated negotiation, but also by proposing options to resolve the case, based upon the “subject matter expertise” of the PPC. It is specifically because the PPC has had training and experience as a CCE that allows the PPC to utilize this expertise in helping the parties reach agreement regarding a parenting plan for their children. Della Noce (2009) noted that evaluative mediators take an interest not only in the process of a dispute, but also in the content of a dispute, using case assessment to exert a considerable degree of influence over both in pursuit of settlement.

In a previous article (Pickar & Kahn, 2011), the SFPPC was presented as a single course of evaluative mediation. However, this method has the ability to assist families with enduring conflict, who may benefit over time, from the additional intervention of the PPC. Though many families with high conflict may need the ongoing use of a parenting coordinator, the majority of post-divorce families have enduring low to moderate conflict, in which a parenting plan dispute can be resolved outside the court system by a mental health professional with skills in both evaluation and mediation. The intermittent use of a PPC can assist families in either resolving new parenting plan disputes or address changes in the family system requiring a re-examination of a parenting plan. Therefore, the purpose of this article is to extend and expand upon the role that can be provided by the PPC as presented by Pickar and Kahn (2011), by delineating ways the PPC can assist families with parenting plan conflicts that may occur over the life cycle of a separated or divorced family. The conceptualization of such an intermittent use of the PPC role with divorced families has been realized as the author has acquired greater experience utilizing the SFPPC method with families for repeated episodes of evaluative mediation. This article will offer case examples of the intermittent use of the SFPPC by the PPC, as well as further elucidate the unique skills that a child custody evaluator, also trained in mediation, can bring to working with families with enduring conflict outside of the court system.

## THE SETTLEMENT-FOCUSED PARENTING PLAN CONSULTATION

The SFPPC is the evaluative mediation method proposed to provide intermittent, out of court assistance to postdivorce families needing expert help with parenting plan re-examinations or with resolving new child custody evaluation disputes. Pickar and Kahn (2011) presented a detailed description of this procedure, which will be briefly summarized here. While the SFPPC has a clearly articulated structure, it can be flexibly applied, depending on the particular needs of a previously seen family at a new point of intervention.

The SFPPC is a hybrid ADR method that blends the advantages of CCE, mediation, and collaborative practice, typically at a greatly reduced cost compared to a CCE; this method typically costs less than half the price of a CCE. In fact, the cost savings are likely much greater to a separating or divorced family, as this process avoids the additional expense involved in a traditional litigation and evaluation process, including declarations, depositions, retention of adverse experts, and possible trial. The purpose of this procedure is to involve a child custody expert at the beginning of the process to offer solutions, rather than later in the process, as often occurs during a traditionally litigated custody dispute. This method is a form of mediation and the information gathered during the process is confidential and utilized for settlement purposes only. There is no report, and the only written document is a parenting plan documenting the agreements reached during the process, which can serve as the basis for a stipulation and order. The PPC, in addition to providing parents with assistance negotiating a parenting plan for their children, provides education related to enhancing a child's adjustment to a divorce, as well as helps parents with conflict disengagement.

### Procedures

The SFPPC methodology is as follows: If parents are represented by counsel, there is an initial joint conference call with the attorneys to clarify the issues to be mediated. If the SFPPC is being utilized as an adjunct to a mediation of all other non-custody issues, conducted by an attorney-mediator, the PPC then has an initial phone call with the attorney-mediator. A joint meeting with both parents is the second step, to clarify the issues under consideration and to obtain joint agreement about the procedures to be utilized. Consistent with interest-based negotiation (Fisher & Ury, 1981) and narrative mediation practices (Winslade & Monk, 2008), in this initial joint meeting, the PPC highlights common underlying interests and attempts to elicit a shared parental vision regarding their mutual and cooperative involvement in the children's lives in the future. Next, the PPC has individual interviews with each parent, followed by individual interviews with the children, as this is a procedure that places a premium on including "the voice of the child" in the process (Smart,

2002; Taylor, 2006). If parents jointly agree that it would be helpful, the PPC may also gather collateral information from sources such as teachers or psychotherapists. Optional procedures are also available to parents as part of the process, such as: parent-child observations; review of past records; home visits; and in more rare instances, psychological testing of children or adults.

The procedure typically concludes with the PPC conducting a settlement meeting (typically lasting 2–3 hours) with the parents and their counsel (or the attorney-mediator), in order to provide feedback and negotiate a parenting plan arrangement. This meeting is an opportunity for the PPC to address the original concerns posed by the parents and to provide feedback regarding the children's adjustment to the separation or divorce (which may also include reporting upon their living preferences). As this is mediation, albeit evaluative mediation, a specific recommendation of a parenting plan is first withheld by the PPC in favor of assisting parents to reach their own agreement, if they are able. Given the consultant's experience as a CCE, the PPC is in a good position to describe the relative advantages and disadvantages of plans proposed by the parents, as well as to assist the parents in contemplating alternative plans along with the advantages these suggestions may have over the plan favored by either parent. The PPC also typically shares empirically-based knowledge about the needs of children of divorce with the parents. If the parents have difficulty reaching a firm agreement, a temporary agreement for a parenting plan might be reached, to be instituted on a trial basis, with a review in the future in order to learn how the children have adjusted to the schedule.

### Ethical and Legal Issues

Ethical, legal, and professional practice issues were extensively addressed in a previous publication (Pickar & Kahn, 2011), but a few of these issues will be highlighted here. Given that the SFPPC is a new procedure with no practice guidelines, it is suggested that PPCs follow the Model Standards of Practice for Divorce and Family Mediators (AFCC, 2000). For evaluative procedures utilized in the SFPPC, Pickar and Kahn suggested following relevant portions of the Model Standards of Practice for Child Custody Evaluation (AFCC, 2007). If this method becomes more widely used, it would be best for the SFPPC to have its own model standards of practice that incorporate and synthesize aspects of both the model standards for mediators and CCEs.

It is recommended that professionals serving as a PPC do so only upon stipulation of the parents and a formal order of the court, so as to be accorded quasi-judicial immunity. The SFPPC is a form of mediation, so the stipulated order should also specify the confidential nature of the process. An ethical obligation of all mental health professionals is to provide informed consent, so a detailed informed consent agreement<sup>1</sup> should specify the consultation procedures and fee arrangements. Additionally,

the agreement should also note that information gathered during the process shall remain confidential unless the PPC is asked to release information by joint agreement of the parties or is required to break confidentiality by law (i.e., suspicion of child abuse, danger to self or others).

Lastly, the PPC needs to avoid multiple relationships or other perceived source of bias. Therefore, it is best that the PPC not have had any prior contact with family members who will be involved in the consultation. The informed consent agreement should also specify that if the parents do not reach a settlement and eventually pursue a CCE, the PCC cannot serve in this role. Some may question whether the very nature of the PPC role represents a “dual role,” as the PPC is using both mediation and evaluation strategies. A far more accurate way to describe the SFPPC process is that the PPC serves in a “hybrid role,” utilizing an integrated set of strategies, drawn from both mediation and CCE, geared towards assisting parents reach a voluntary resolution of their child custody dispute.

#### WHAT CHILD CUSTODY EVALUATORS CAN BRING TO THE MEDIATION TABLE

Generic mediation skills are not sufficient for conducting child custody mediation, which requires a much broader set of expertise than negotiation skills alone (Saposnek, 1998). The field of divorce and child custody mediation has tended to be dominated by family law attorneys, with far fewer mental health professionals serving in this role. There is no evidence that attorney mediators achieve better outcomes than non-attorney mediators, yet it is the legally trained who are mostly succeeding as mediators. So why has child custody mediation increasingly become the province of attorneys? Mayer (2004) described that when the family mediation field began, it was genuinely interdisciplinary, but over time, there has been an increasing dominance of attorneys in the private mediation arena. Mayer believes that such a phenomenon may be indicative of the fact that many people feel the need for the protection of someone with legal training more so than someone with mental health skills in the child and divorce field.

The dominance of attorneys in family mediation raises the question as to whether some benefit to divorcing families is lost when mental health professionals do not remain in the forefront of the family mediation field, alongside family law attorneys. One could even argue that mental health professionals, with experience in the divorce and child custody realm, may actually be the best and most appropriately trained group of professionals for conducting child custody mediation. For example, Diamond (2011) noted that just as the attorney-mediator’s legal acumen and experience are assets in mediation, the psychologist-mediator’s skills and experience in assessment, diagnosis, and treatment are invaluable in the mediation context. Diamond further

underscored that a psychologist-mediator may be particularly effective with personality disordered clients or divorcing parents with special needs children.

Saposnek (1998), who has written the only book to date solely focused upon the mediation of child custody disputes (as opposed to other areas of divorce mediation, such as spousal and child support, division of property and other assets), described several areas in which the child custody mediator must have training, experience, and competency. These include having valid and current knowledge in the following areas: child development, children's typical and atypical responses to family conflict, family dynamics in the divorce process, and empirical outcome data for children and parents in a variety of parenting plan arrangements. Saposnek further suggested that the mediator should have a broad general knowledge of psychological functioning in both adults and children. For a mediator to be an advocate for a child's needs, Saposnek stated, "It is incumbent on the mediator to be fully knowledgeable about how children think, feel, and act during and after a divorce, as well as in different stages in development" (p. 50).

Mayer (2004) described that while the role of a third party neutral is an important and powerful one, it is only one of many roles needed to adequately serve people in conflict. He noted that people in disputes may also require consultants and advisers and suggests that the role of the third party neutral be expanded upon. As Mayer (2004) states:

Many critics of family mediation in divorce have argued that substantive experts and advisors are needed in order to carve out good agreements and that the conflict resolution process tends to exclude, minimize, or at least impede the participation of these experts (i.e., financial, child development, and others) (p. 66).

One notable exception to the aforementioned quote is the field of collaborative law (Tessler & Thompson, 2006), which does make use of various experts in the process.

In the past, evaluative mediation has engendered considerable criticism in the mediation field. For example, Riskin (1996) received criticism by several "purists" in the field (Alfini, 1996; Love, 1997) when he enumerated some of the particular strategies, techniques, and benefits of evaluative mediation. In describing evaluative mediation, Riskin emphasized that he was attempting to characterize a particular form of mediation that frequently took place in the real world of mediation and often produced good results. Supporting this contention, Della Noce (2009) recently reported that in a study of the types of mediation practiced by practitioners, 62% of the sample claimed to practice evaluative mediation, either alone or in combination with other mediation approaches (i.e., facilitative or transformative). Likewise,

Charkoudian, De Ritis, Buck, and Wilson (2009), in their study of mediator approaches and techniques, found that mediators who reported using evaluative strategies do not give themselves the label of *directive* or *evaluative*. The authors raise the question of why mediators shy away from terms such as evaluative or directive, even while using strategies that the theoretical literature defines as evaluative. Evaluative mediation techniques must clearly have much to offer toward achieving settlement, in spite of the fact that many mediation practitioners do not want to acknowledge their use of such approaches.

Years ago, Wallerstein and Kelly (1980) emphasized that a divorce mediator must remain an advocate for the children. This notion is controversial though, with some viewing that the mediator's role is to remain a neutral facilitator of parent's negotiations, with no substantive content ever contributed by the mediator. At the other end of the continuum are those who believe that child custody mediators should be strong advocates for children and provide parents with current knowledge about the needs of children in divorce. The Model Standards of Practice for Divorce and Family Mediators (AFCC, 2000) supports this position, as it states in the introduction that a requirement for mediators is "that the best interests of the children be taken into account" (pp. 111–112). Additionally, the AFCC standards state, "The mediator should inform parents about the range of options available for post-divorced or separation parenting arrangements and the costs and benefits thereof without providing legal advice or therapy" (Standard 9B, p. 118).

Child custody evaluators bring a unique skill set for conducting evaluative mediation of a child custody dispute. Lowry (2004) described evaluative mediation as a process in which the mediator makes assessments about the conflict, as well as its resolution, and communicates those assessments to the parties. Della Noce (2009) described that what makes evaluative mediation persuasive is the mediator's delivery. The evaluative mediator must be credible, and as Riskin (1996) noted, must have high "subject matter expertise" (p. 46). This entails not only good facilitative mediation skills, but the evaluative mediator must be able to assess the strengths and weaknesses of each party's case, develop and propose options to resolve the case, and predict possible outcomes at trial if a dispute, not settled in mediation, were to be fully litigated. The evaluative mediator, who has past training and experience performing child custody evaluations, has the best expertise to effectively perform such a role.

The PPC with a background in CCE not only has high subject matter expertise regarding applicable child custody laws in his/her jurisdiction of practice, but also has knowledge of the psychological and developmental needs of children, especially as they relate to child custody and access. The PPC with CCE experience also has expertise in interviewing and observing children and adults using forensic methods utilized in child custody



evaluations (Gould, 2006). The PPC who has also been a CCE will have the unique vantage point of knowing how various custody plans have worked for children in many other families, as well as be acutely aware of the research literature regarding children's adjustment to divorce and various parenting plans. Pickar and Kahn (2011) noted that the majority of divorce mediators do not interview children (i.e., over 80%, according to Smart (2002) and Taylor (2006)) but stressed the importance of interviewing children and bringing their voice into the mediation process, a skill which has been well-honed by CCEs. Some child custody mediators may shy away from interviewing children, perhaps concerned they lack the expertise to engage in this task. Because there is an evaluative component to the SFPPC, Pickar and Kahn recommended that the information-gathering process should be consistent with many of the current standards of practice for CCEs (AFCC, 2007; APA, (2010) and should be conducted in a manner that follows the scientifically-informed approach to CCEs (Gould, 2006, Gould & Martindale, 2007). Therefore, it is reasonable to conclude that a mediator, also trained in CCEs, is the best person to provide evaluative mediation of a child custody dispute.

#### THE NEED FOR INTERMITTENT MEDIATION WITH FAMILIES OF DIVORCE

An important shift that has taken place in the psychotherapy field over the last 20 years, with relevance to the divorce field, has been the adoption of a "family practice" or developmental model of mental health treatment. This is quite different from a psychopathology or "illness" orientation, as potential problems arising in the life of a child or family are viewed as an inevitable part of child development and family functioning (Pickar & Lindsey, 2008). Many problems arise as children and families move through the life cycle and accommodate to either changing developmental stages (i.e., beginning preschool, kindergarten, junior high or high school, puberty) or to crises within the family (i.e., divorce, relocation, death of a grandparent, illness, traumatic accident). Just as the family medical practitioner is available to children and families on an ongoing basis to deal with medical issues as they arise, the child psychologist or psychotherapist working from a family practice perspective has a long-term relationship with a family characterized by "intermittent therapy throughout the life cycle" (Cummings, 1990). Essentially, mental health treatment offered to families from this orientation typically involves providing therapy at intermittent intervals over time on an "as needed" basis, helping the child or family problem-solve a difficulty while also identifying and removing impediments to healthier functioning. Then, an "open door policy" is offered to families to consult with the professional again if problems arise in the future.

This “family practice” model characterized by intermittent interventions over time has great applicability to the divorce field and is already being practiced by many mental health professionals working in the divorce arena. For example, many therapists provide intermittent coparent counseling to families due to children’s changing developmental needs and the likelihood that future intervention will be needed given the nature of ongoing conflict in many divorced families (Garber, 2004). Parenting coordinators are most frequently providing intermittent interventions over time; there may be periods of intense activity or intervention with a family interspersed by periods of calm in which only minimal intervention may be necessary (Sullivan, 2008).

Implicit in the Model Standards of Practice for Divorce and Family Mediators (AFCC, 2000) is a developmental model that recognizes that normative changes take place in divorced or separated families over time, which may require future or intermittent mediation. As stated in the standards, “The mediator should advise parents that parenting plans may need to be revised as developmental needs of the child evolve over time and help the parents develop appropriate dispute resolution mechanisms to facilitate future revisions” (Standard 9F, p. 118). In reality, however, child custody mediators are typically engaged for a time limited task, to help mediate a child custody dispute either right before, or soon after, separation. Mayer (2009) has proposed an alternate vision, urging that mediators should promote their services as being available to disputants over the long-haul, by either contracting for long-term involvement, or agreeing to play a short-term role with a long-term focus. He even suggested an “on-call” arrangement for dealing with future instances of conflict or disagreement between disputants, which bears a remarkable similarity to the family practice model in mental health treatment previously discussed.

## ENDURING CONFLICT VERSUS HIGH CONFLICT

Mayer’s (2004, 2009) suggestions for the future of the mediation field are based upon a concern that the mediation field has over-focused on the goal of “conflict resolution.” Mayer takes a more realistic stance that many conflicts cannot be resolved and that disputants need assistance, over time, in engaging in conflict in a constructive manner. He notes that conflict is a process that is not always amenable to resolution, as we usually understand the concept. For example, Mayer states:

The conflict resolution field has not given more than lip service (if that) to helping people engage in conflict constructively and effectively. We have viewed this as neither our purpose nor our strength. This significantly limits the role we can potentially play and the degree to which we can affect the way conflict is conducted (Mayer, 2004, p. 32).

Mayer (2009) introduces the notion of *enduring conflict*, which should be differentiated from the dynamic of *high conflict* as discussed in the divorce literature. Johnston, Roseby, and Kuehnle (2009) described high conflict families by highlighting that for about one-tenth of all divorcing couples, unremitting animosity will shadow the entire growing-up years of the children. These authors described such families as engaging in a modern form of “tribal warfare,” where significant others including extended kin, new partners, mental health professionals, attorneys, and even judges become part of the tangle of disputing relations and serve to entrench the fight. High conflict families are characterized by high rates of litigation and re-litigation, high degrees of anger and distrust, incidents of verbal abuse, intermittent physical aggression, and ongoing difficulty in communicating about and cooperating over the care of their children at least 2 to 3 years following their separation.

Most descriptions of high conflict families in the divorce literature are based upon a pathology orientation, whereby these families are characterized as the most extreme of “bad divorces” in which the high level of hostility does not improve over time. Mayer’s (2009) description of enduring conflict is based upon a more normative notion that many conflicts cannot be resolved, but rather disputants need assistance in “staying with conflict” in order to get through the next hurdle. In describing the nature of enduring conflict, Mayer further states:

I have avoided the terms “intractable conflict” or “impasse” in this work. We need to get away from thinking of long-term conflict as a trap from which escape would be desirable but impossible. Instead, we have to see enduring conflict as not only inevitable but essential, an opportunity to grow, to confront life’s biggest challenges, and to give fuller meaning to our lives (2009, p. 271).

Post separation or divorced families who fall into the category of high conflict almost always demonstrate enduring conflict. However, the majority of divorced families likely have some form of enduring conflict but do not necessarily have high conflict. Stahl’s (2011) descriptions of both low-conflict and medium-conflict families are useful here. He noted that 20% to 30% of divorced families, whom he described as *low conflict*, are characterized by parents who by themselves, or with the aid of their attorney or mediator, are able to resolve custody and financial issues. He further described that 50% to 60% of families fall into the category of *medium conflict*, as they have trouble arriving at agreements, may provoke loyalty conflicts in their children, but still benefit from several interventions over time, such as ongoing coparent counseling, divorce education, or even child custody or brief focused interventions.

It is with the low and medium conflict families, who comprise the vast majority of post divorce families, that intermittent evaluative mediation can

be useful, especially if one applies the viewpoint that some enduring conflict is normative for divorced families and can be assisted by a professional with the skills to help parents deal with their conflicts constructively. Mayer (2009) also emphasized that when mediation guides disputants in communicating around the inevitability of future conflict, and when the mediator facilitates dialogue between opposing sides in a long-term conflict, part of what is accomplished is helping people “stay with conflict.” For example, differences about how to parent are natural, so many divorced or separated parents need help in learning how to raise their concerns and listen to each other so that they can continue to work as parents, even when they disagree. Mediation, based upon the normative model of enduring conflict, helps parties accept the importance of dealing with conflict constructively over time, knowing that it may evolve but is not likely to end.

The notion of intermittent mediation is a positive and pragmatic approach to enduring conflict, as it provides an avenue through which parties can try to resolve, ameliorate, or contain problems as they arise. Divorce mediators need to help parents maintain a long-term perspective. Divorce professionals are in an ideal position to promote this perspective, as the enduring problems newly divorced parents may face in the years ahead has been repeatedly observed. Mediators need to have a broader vision of what can be offered to families, and evaluative mediation, conducted intermittently over time, can provide constructive and meaningful intervention with long-term disputes and enduring conflicts.

#### BENEFITS OF THE INTERMITTENT USE OF A PPC WITH ENDURING CONFLICT

Most child custody mediation is time-limited, but as previously described, the SFPPC method can be of tremendous benefit when used intermittently to address the changing needs and issues of separated or divorced families over the course of the minor children’s lives. While an agreement may be reached with a course of child custody mediation at a specific time, when considering the nature of enduring conflict inherent in many divorced families, the resolution process may need to be an ongoing part of managing conflict. Mayer (2009) noted that wise agreements solve problems, but in the case of enduring conflict, their most important function is often that they allow the conflict to proceed as effectively as possible. The PPC not only can help divorced families over time with conflict negotiation and resolution, but due to their expertise as child custody evaluators, can also assist with the substance of the problem.

The PPC can be particularly useful in monitoring and modifying parenting plans that may need to evolve over time. This would be the case with parents who separate with infants, toddlers, or very young children, when custody periods may need to expand or change incrementally as the child

reaches new developmental stages. Parenting plans may also need adjustment in situations in which parenting time has been restricted due to serious parental mental health or substance abuse issues. Parenting plans may also need re-examination and adjustment over time with special needs children (Saposnek, Perryman, Berkow, & Ellsworth, 2005), such as those with Autism or Asperger's Syndrome, physical handicaps or life-threatening medical conditions, or newly emerged psychiatric illnesses of children or teenagers (i.e., depression and suicidal behavior, psychosis, conduct disorder, eating disorder). Additional intervention may also be necessary when a parent decides that he or she needs to relocate to different geographical regions, whether due to a new relationship, financial difficulties, or the support of family in another community. Thus, the PPC can help families re-examine parenting plans over time, facilitate resolution of disputes, provide education regarding factors that will continue to influence children's positive adjustment to divorce, and provide recommendations to families as requested.

To illustrate this model, three case examples<sup>2</sup> of families who have made intermittent use of a PPC will be presented. In each instance the SFPPC methodology (Pickar & Kahn, 2011) was utilized, with tailored modifications specific to each family depending upon the questions and issues addressed.

### Case 1: Separation With an Infant/Toddler

Wayne and Monica separated after a 4-year marriage, when their son Robbie was 9 months old. Wayne did not want the separation, which was initiated by Monica. Since Robbie was born, Monica did not work outside the home and was Robbie's primary caretaker. At the point of separation, each parent retained an attorney and agreed to Wayne spending three 2-hour blocks of time with Robbie each week, but in the mother's home. These parents could not agree on a parenting plan, so upon the recommendation of their attorneys, they hired a parenting plan consultant (PPC) to assist them in mediating a parenting plan for Robbie. The PPC began conducting a SFPPC when Robbie was 13 months old.

In the initial joint meeting with the parents, as well as during the individual appointment with Monica, she expressed her distrust of Wayne's ability to care for Robbie, and especially her anxiety at Robbie being away from her for any significant period of time. She maintained that when they were together, Wayne would never want to get up at night to soothe Robbie, and she claimed that he did not seem particularly interested in holding him or giving Robbie his bottle when he was home (mother stopped breastfeeding after 4 months due to an infection). Wayne disagreed with Monica's portrayal, viewed himself as very interested in taking care of his son, but acknowledged his lack of experience and nervousness in caring for an infant on his own. However, he maintained that since Robbie began walking (which he did at 12 months), he had become much closer to his son, and

Wayne was requesting to immediately begin at least one overnight a week. Monica was very hesitant to have any paternal overnight periods of custody, and she maintained the position that paternal overnights should not even begin until Robbie was at least 2 years old. In this first joint meeting, the PPC was able to elicit these parents' common underlying interest to both be actively involved in the life of their child and their wish to be able to work cooperatively regarding the care of Robbie.

The PPC completed the steps of the SFPPC as outlined by Pickar and Kahn (2011). Because Robbie was too young to interview, the parents requested that the PPC conduct observations of each parent with Robbie at their respective homes. Monica especially wanted the PPC to examine Wayne's parenting skills and how he interacted with Robbie, and she wanted Wayne's apartment examined with respect to its safety for Robbie.

In the five-way feedback/settlement meeting with the parents and attorneys, Monica was relieved to hear the PPC discuss the secure attachment he viewed Robbie developing with his father and the nurturing, safe, and attuned manner in which Wayne handled Robbie during the home visit. She was also relieved to hear that Wayne had fully childproofed his home. The PPC had the opportunity to witness the father deal effectively with Robbie during a crying fit, which provided some further assurance to her. In order to pave the way for effective negotiation, the PPC anticipated Monica's resistance to paternal overnights, first providing information and education regarding developmental tasks of toddlers and ways to arrange paternal custody to enhance the development of a secure attachment, while reducing separation anxiety from the mother. Consistent with many of the recommendations provided by Kelly and Lamb (2000), the PPC described the benefits to toddlers of having some evening and overnights with non-custodial parents to provide for a greater opportunity of bonding experiences (i.e., bathing, feeding and nighttime rituals, nighttime comforting, morning routines).

In negotiations, these parents were able to agree on the father having one overnight a week (beginning at 5 p.m. and ending at 9 a.m.), along with two additional 5-hour periods of custody each week in his home. The mother was hesitant to agree to anything further until she could see how Robbie was handling this time away from her. At the suggestion of the PPC, the father also agreed to take a parenting class specifically focused upon the parenting of toddlers and preschoolers, which further reassured the mother. An agreement was made for the PPC to again meet with the parents and counsel after the aforementioned parenting plan had been in effect for 4 months. Because paternal custody periods were proceeding well, in the subsequent five-way meeting 4 months later, these parents were able to negotiate a full parenting plan agreement spanning the next 3 years, with incremental increases in overnight periods of custody with father. The parents also agreed that they aspired to have a fully shared (50/50) child custody plan by the time Robbie was 5 years old.

One year later, a crisis emerged following the mother's decision to remarry. Wayne became upset that "another man" was now involved in parenting his child, and he threatened to take the mother to court in order to immediately obtain a 50/50 shared parenting plan. Wayne was worried that the stepfather would try to usurp his role, and he was concerned that perhaps Monica wanted to relocate. Monica was re-experiencing concerns about eventually moving to a 50/50 custody arrangement by the time Robbie was 5 due to the father's long work hours and overuse of childcare. Because the parties had a previously beneficial experience with the PPC, they re-enlisted his services rather than go to court. The second SFPPC process allowed each parent an opportunity to express their concerns to the PPC, and enabled the PPC to facilitate dialogue between the parents, who had become somewhat polarized since the mother's involvement in a new relationship. The parents accepted the PPC's recommendation that they immediately begin in coparent counseling. This intervention was especially important, as the parents had been coparenting fairly cooperatively until Monica's decision to remarry. After eight sessions of coparent counseling, the parents met again with the PPC 4 months later. Now the PPC was able to assist them in re-negotiating a parenting plan, with further incremental increases in paternal custody and up to a 50/50 plan beginning when Robbie would enter kindergarten.

## Case 2: Parental Instability and Substance Abuse

Bob and Faye were married for 15 years and had a son and daughter, Will and Jenny, who were 8 and 10 years old. Following separation, the parents agreed to a parenting plan outside of court, in which the mother had custody of the children on weekdays, and the father had custody of the children for three of four weekends each month, from Friday to Monday morning. This schedule had been working for the year after separation, as the father traveled during the school week for his business. Faye, who did not want the divorce and was struggling with depression as a result, also developed an alcohol abuse problem, which she tried to hide from Bob. The children, who always had an extremely close bond to their mother, initially hid her drinking problem from their father, but eventually told him that they frequently had difficulty awakening their mother in the morning, they were sometimes late to school, and there was a lack of food in the house. Frequently, the children were the ones actually making the meals for their mother and themselves.

Bob eventually confronted Faye about her drinking and told her he would go to court to obtain full custody of the children unless she immediately agreed to enter a residential substance abuse treatment program. Faye agreed to give temporary full custody of the children to their father while she attended the 4-week program, and Bob fully adjusted his work life to travel less, using the assistance of his own mother (paternal grandmother) to care

for the children the one day a week he would travel. One month after completion of her treatment program the mother relapsed but agreed to attend a 3-month day treatment program for women with substance abuse problems. While these parents agreed that Faye could have the children for three 3-hour contacts each week during the time she was in the day treatment program, the father would not agree to maternal overnights upon completion of the day treatment program. The mother wanted overnights with the children to begin immediately after she completed the day treatment program and had 3 months of sobriety, but the father worried that she might relapse again and believed the children were more stable and better cared for with him. These parents needed to resolve the present child custody dilemmas, and they wanted to stay out of court. Thus, at the advice of their attorneys, they hired a PPC to perform a SFPPC to mediate their dispute and provide a direction regarding a parenting plan.

The PPC utilized the structure of the SFPPC, including an initial joint meeting with the parents and individual meetings with the parents and each child, followed by a settlement/feedback meeting with the parents and their counsel. The PPC also spoke with the children's therapist. At the five-way settlement/feedback meeting, the PPC was able to assist the parents to mediate a parenting plan to take place over the next year, in which the mother agreed to continue in weekly AA meetings for 12 months, while also attending weekly individual therapy. The PPC provided education to the parents regarding the risks to children of being raised in an alcoholic household and the need to be able to fully count on their mother's sobriety and to maintain a consistent routine at her home. The parents agreed that after the mother had maintained her sobriety for 6 months, she could begin having the children for one 24-hour period each weekend in addition to two 4-hour contacts each week, from after school until 7 p.m. The children had a very strong bond to their mother; they missed her greatly and both told the PPC that they each wished to spend half of the time with their mom as quickly as possible. These parents agreed that if the mother maintained her sobriety for one full year, they would then begin a shared 50/50 custody arrangement in which they alternated weeks with the children. Additionally, contingencies were agreed upon should the mother relapse again, whereby she would lose all custody periods until she was clean and sober for 60 days, with the exception of having the children under supervision with the paternal grandmother for 1 to 2 visits per week. As a result of the mother's substance abuse and the necessity of the father assuming custody, Wayne was able to radically shift his travel schedule so that he would only have to travel on alternate weeks.

Faye remained clean and sober until the one-year mark, and the parents began sharing custody of the children on an alternating week schedule. However, the mother then relapsed 6 months later, the father again assumed custody by joint agreement, and the mother re-enrolled in the day treatment



program. Wayne, by this time, was hesitant to ever return to a 50/50 custody schedule, which Faye wanted to resume after she was clean and sober for 6 months. So, the parents and counsel again requested a consultation with the PPC.

In this second SFPPC process, in addition to both joint and individual meetings with the parents, the children were re-interviewed. While the children were upset about their mother relapsing and now not spending overnights, it was also evident that they had developed a deeper and much improved relationship with their father, who provided love and nurturance and a clear and consistent structure and routine. The children described feeling a greater sense of safety in their father's home at this point in time. Initially, the father had hoped for a return to a fully shared parenting plan, but in settlement negotiations in the last meeting, the father would not agree to a return to a 50/50 custody situation. The PPC discussed the greater stability for the children in the father's household and the disruptive nature of the custody changes, given the mother's relapses. Both parents agreed that it did not make sense to develop a custody plan beyond a year, given the tenuous state of the mom's sobriety. The PPC helped them negotiate a plan whereby the children remained in their father's primary physical custody on an ongoing basis, with the mother to begin one, then two overnights each week, as she achieved greater sobriety. The parents asked the PPC to remain as a consultant, to set up a review in one year, and to be available for any renegotiation of the plan, depending on the mother's progress. As was the case previously, the PPC assisted the parents and their counsel with contingency parenting plans should the mother relapse again. In this case, the mother's substance abuse was an ongoing issue creating enduring conflict in this family, which the parents would need to negotiate again in the future.

### Case 3: Child Psychiatric Problems and Alienation Dynamics

Tom and Karen were married for 18 years and had three children: Aaron was 13, Jed was 10, and Sally was 4. Tom initiated the separation as he felt he no longer loved Karen, and marital counseling had not helped them improve their marriage. There had been domestic violence in the marriage on a few occasions, which fell into the category of mutual shoving and pushing. At the point of separation, Tom agreed for Karen to have the children in her primary physical custody, pending their completing a full marital settlement agreement. The parents initially agreed, through the help of their attorneys, that the children would be with the father on alternate weekends from Friday to Monday morning, as well as on alternate Thursday overnights. At the point of separation, though, the father expressed to the mother that he wanted to soon share physical custody of the children and have equal parental involvement. However, the children complained about going to their father's home, and the mother said it was a struggle to get them to go. The mother also

claimed that the father smoked marijuana around the children (the father had a medical marijuana card, stating he used cannabis for sleep, and only smoked after 10 p.m.), while the father claimed that the mother openly derided him to the children. Furthermore, the father claimed that the mother had begun a process of “alienating” the children against him, even before the separation. Additionally, one month following the separation, their middle child Jed made a serious suicide attempt and had a 2-week hospitalization. Jed blamed the father for the divorce, and he would sometimes become physically violent toward his father. Jed was immediately placed in outpatient psychotherapy following his discharge from the hospital. The parents each had an attorney as well as hired an attorney-mediator to assist them in negotiating a full marital settlement agreement, including all financial issues and child custody. The parents had a clear wish to remain out of court. Given the complexity of the family issues, the attorney-mediator suggested that the parents undergo a SFPPC with a PPC to provide an evaluative mediation of the custody issues in order to assist them in arriving at a parenting plan.

In the initial joint meeting with the PPC, the parents each expressed a desire to negotiate a parenting plan without going to court or undergoing a child custody evaluation. In spite of a fair amount of animosity between them, they could identify a common interest in supporting the children’s relationship with the other parent and in each being fully involved in the children’s lives. However, it became clear to the PPC that while Karen claimed to want to support the children’s relationship with their father, she had aligned herself strongly with the children against the father by being openly critical of him to them. So, while the mother did engage in behaviors that alienated the children (especially Jed) against their father, there was also a complex array of factors contributing to the alienation dynamic, consistent with those described by Kelly and Johnston (2001). These factors included Tom’s passivity and lack of intense involvement with the children prior to separation, his somewhat weak emotional attunement to the children, and the children’s greater affinity for their mother prior to the separation.

In the SFPPC, not only were the children and parents interviewed, but the multiple therapists who were involved with the family were also interviewed by the PPC. The two older children expressed wanting only very limited contact with their father and clearly blamed him for the divorce. Aaron and Jed described their father’s somewhat minimal involvement with them prior to the separation and his “preoccupation with work” when he was home. During the settlement/feedback meeting (in which both parents, their counsel, and the attorney-mediator were present), not only did the PPC assist the parents in mediating a temporary parenting plan, but he also provided education about the alienation dynamics taking place within the family. He was able to gently caution the mother about the fact that her subtle expression of anger at the father in front of the children was having a very destructive impact on their children’s view of their father. In this meeting,

father agreed to not use marijuana when the children were in his custody, which helped ameliorate the mom's concerns that he might be "stoned" while supervising the children. The PPC also offered some therapeutic recommendations to the family regarding the father having counseling with Aaron and Jed in order to improve their relationships. The mother agreed for the PPC to speak with her therapist to provide input on the mother's need to also utilize therapy to raise her awareness of ways in which she may inadvertently influence the children against their father. With the assistance of the PPC in the settlement meeting, the parents negotiated a plan that incrementally increased the father's time with the children to approximately 35% over a one year period, with the increases in paternal custody taking place as the counseling sessions between the father and Aaron and Jed progressed. The plan agreed to by the parents was incorporated into the full marital settlement agreement.

Two years later, the oldest child, Aaron, became extremely depressed and was refusing to go to school. He was briefly hospitalized then placed in a residential treatment program for 6 months. The father also had just remarried and wanted to negotiate additional time with the children. The staff at the residential center had expressed that perhaps Aaron spend at least half the time with his father, as they were concerned about his enmeshment with his mother and the impact of the mother's depression on Aaron. Aaron was due to be discharged from the residential treatment center in one month, so the parents and their counsel contacted the PPC to assist the parents in negotiating possible changes to the parenting plan. The father wanted half-time custody of the children at this point in time, and his relationship with Jed had improved greatly, especially since his older brother had left home. Sally was also doing well at school and in both homes. In addition to again interviewing the parents and Jed and Sally in the office, the PPC conducted two telephone interviews with Aaron at his residential treatment center to understand his needs and preferences in light of his discharge in one month. The PPC was also asked by the parents and their counsel to again interview all of the mental health professionals who had been working with the family, especially Aaron's therapist at the residential treatment center. The mother claimed that the children did not like the father's new wife and requested that the PPC observe the children with her. When meeting with the children, their view of their stepmother was not as negative as their mother portrayed, and the observation actually shed light upon the positive contribution the stepmother could make to the children when in their father's home. With the PPC providing these observations to the mother, she was able to agree to move to a shared 50/50 physical custody arrangement for all three children. The PPC, in assisting the parents in negotiating this agreement, was able to bring in "the voice of the children" by letting the parents know that they were actually in favor of this change. The father reaffirmed his agreement to not smoke marijuana when the children were in his home.

In this case, the PPC completed a number of procedures that would typically be done in a CCE. However, this was mediation (albeit evaluative mediation), so the parenting plans agreed to at both settlement meetings included the PPC facilitating discussions about various options. The PPC provided a rich array of data to the parents regarding the children's functioning, gathered from direct interviews as well as from the collateral interviews with the children's therapists. There was no report at the end of either mediation, but rather, a parenting plan was generated in each of the two settlement meetings, with the attorney-mediator able to convert the agreed upon plan into a stipulation and order. An important component of the second settlement negotiation was helping these parents understand the nature of enduring conflict, such as that they should expect that future difficulties will likely arise, while maintaining the perspective that "new problems can be effectively dealt with" and the agreed upon parenting plan arrangement should remain consistent and supported by both parents.

## CONCLUSIONS AND FUTURE DIRECTIONS

Intermittent use of a PPC follows in the mediation tradition of placing a premium on the voluntary resolution of child custody disputes outside of the courtroom. While this method will be most successful with families motivated to stay out of court, the case examples illustrate that a PPC can work effectively with a complex array of issues perhaps not normally considered to be amenable to mediation. The PPC shares some similarities to the role of a parenting coordinator, as both integrate functions usually performed by mediators and child custody evaluators. Barsky (2011) recently cautioned about the risks of a hybrid role such as the parenting coordinator, particularly the blending of facilitative and decision-making roles. However, as the cases presented here demonstrate, the role of the PPC is quite distinct from that of a parenting coordinator, as at no point did (nor would) the PPC become a decision-maker. The PPC integrated interest-based negotiation and facilitative mediation skills with CCE procedures, which, when combined with the influence of the "subject matter expertise" of the PPC, enabled the parents to reach voluntary resolutions of their child custody disputes.

This article expands upon the previous work of Pickar and Kahn (2011), by extending the use of the SFPPC by the PPC to include intermittent evaluative mediation interventions over time, given the expectable changes that take place in the life cycle of a separated or divorced family. This approach is also tailored for the reality that enduring conflict is normative for the majority of families, who need assistance in engaging constructively in such conflict over time; parenting plans can be adjusted on an intermittent basis as family circumstances or the needs of children change and evolve. The cases described in this article were generated by direct attorney referral of

represented parents. However, recent attention has been given to that fact that the number of self-represented litigants in family law cases has skyrocketed nationwide (Shepard, 2010). Therefore, direct access to the use of a parenting plan consultant by self-represented parents could be of major benefit to families with more limited means, by having access to this cost-effective method conducted by a mediator who also has direct expertise in forensic child custody evaluations.

A source of debate in the divorce field has revolved around the question of whether child custody mediators should be strictly neutral facilitators of parent's negotiations, as opposed to providing substantive content expertise as part of the mediation process. Many separating or divorcing couples with children need far more than a neutral mediator but can benefit by enlisting a professional who also is an expert in children of divorce and child custody. The PPC, because of his or her experience and training as a child custody evaluator, is in a unique position to provide parents with current, empirically-based knowledge about the needs of children in divorce, as well as the relative advantages and disadvantages of various parenting plan structures. As is the case with a "family practitioner" perspective in mental health treatment, the PPC can hopefully become a trusted consultant, who over time can help families negotiate the inevitable changing needs and circumstances of their divorced family. The SFPPC is most likely to be a far less expensive option than litigation or child custody evaluation that utilizes the combined expertise of a mediator and a child custody evaluator. This method, when used intermittently, can help families stay out of the court system by using a specially trained mediator/consultant with accrued knowledge of the family, who can aid with future disputes because of the alliance developed from previous contacts. Obviously, parents may not agree to re-utilize the services of a PPC whom they did not feel was helpful, so subsequent articles might address the particular mediator-parent relationship factors that might be necessary for a family to want to recontract for the future use of a PPC.

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#### NOTES

1. A copy of the author's informed consent agreement is available at <http://danielpickarphd.com/publications/Parenting-Plan-Consultation.pdf>

2. In order to protect the privacy and confidentiality of the families, identifying details have been changed, but the integrity of the data regarding family dynamics and interventions utilized have been maintained in each case example.

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