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March 31, 2003

VIA TELEFAX ONLY

Philip N. Sobel, Esq.
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Re: Subcommittee - Custody & Parenting Time

Dear Phil:

I apologize for delay in responding to your letter to Judge Serpentelli, which he referred to me on March 3, 2003.

I have carefully reviewed the proposed Rule regarding appointment of a "parenting coordinator".

I very much am in favor of the concept of a parenting coordinator, but I prefer the use of the term monitor because it suggests a more expansive role and also a reportorial function, which distinguishes it from the mediation referral.

I think the concept of a parenting monitor with reportage responsibilities is very important. The direction of dysfunctional, high conflict individuals to mediation is likely to be unsuccessful. However, the nature of the process results in time being spent and the information obtained from the interactions being useless to the system because it cannot be revealed to judges who must make decisions.

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The parenting monitor procedure overcomes that problem. The Rule makes clear that there is authority to do that, which has become a *de facto* practice among many judges. Some judges designate these interveners as therapeutic mediators, which I think causes confusion. A mediator is a mediator and what is said should be private and a monitor is something else again. The roles need to be distinguished and I think the concept of a proposed new Rule makes wonderful sense.

I have carefully reviewed the proposed Rule forwarded with your letter to Judge Serpentelli and have drafted certain revisions. Let me summarize the rationale of my proposed amendments.

1. I do not believe attorneys qualify to provide this kind of assistance, because they are not necessarily trained in child issues or psychologically sophisticated.
2. I have defined mental health professionals to be a social worker, psychologist or psychiatrist. I deleted the reference to "qualified by experience or training" because I believe to become professionals and receive such licensures, you must be qualified to deal with issues of children and conflict in families. I am aware that some may believe that I have too narrowly limited those qualified and that certainly is an issue that should be discussed.
3. I do not believe we need to limit the circumstances that give rise to designation of a parenting coordinator, as you set forth in the third sentence of the proposed Rule, when deciding whether a monitor should be appointed. I believe the Court should be able to appoint a monitor when it believes such a designation is in the best interests of the children. Moreover, I do not think the monitor's role should be defined as "bringing the parties to an agreement", but rather should be to assist in resolving the dispute in the best interests of the children by working with the parties and making recommendations.
4. I deleted language that implies the parenting coordinator makes any determinations and that the parties have to file an application to the Court to contest same. I have simply provided that a parenting monitor is authorized to propose a resolution and further provides that neither parent is required to accept the monitor's recommendation, but that if the parties do not resolve the dispute, either may bring the parenting monitor's recommendation to the attention of the Court on application pursuant to the Rules. I have further provided explicitly that which is implicit, namely that there will be no confidentiality attached to communications to, with, and from the parenting monitor.
5. I further have clarified the cost contribution by indicating the Court can determine same pursuant to the parties' respective financial circumstances and

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that the Court shall consider the need, ability to pay, and good or bad faith of the parties.

6. I have deleted from the Rule the specific delineation of areas in which the parenting monitor can make recommendations to the parties and the Court. I believe that delineation of some areas may work to effectuate a limitation. On the other hand, it may be that in certain instances, a therapeutic monitor should not attempt to intrude and on basic personal decisions such as the selection of a therapist for the child or a college. I think it is best that the therapeutic monitor's role is left expansive with his primary responsibility being to address any issues that he believes pertain to the best interests of the children.

I am most interested in any comments you may have about the proposed changes. My Supreme Court Family Part Practice Parenting Subcommittee is having a meeting Tuesday night. I have forwarded your material and the proposed amendments I have suggested for the Rule on monitoring to the Subcommittee members. We plan to discuss the issue and, of course, my views do not necessarily reflect anyone else's view.

You may recall that when we spoke on the phone, I referenced the Subcommittee's work last term which led to the then Practice Committee's recommendations to the Court of a Rule relating to procedures to be followed by mental health professionals when performing parenting/custody evaluations and which also gave the Court the power and authority to direct mental health professionals who came to disparate recommendations to consult to determine if a common recommendation could be made.

I enclose herewith for your review a memo from our Subcommittee to the Supreme Court that attempted to respond to criticisms by the New Jersey Bar Association regarding the proposed amendment to R. 5:3-3(d). The proposed Rule amendment is set forth in the enclosed memo. (It is also available in the 2000-2002 full Practice Committee Report). Although the Supreme Court did not accept this amendment, it did not reject it outright. It referred the issue back to our Subcommittee for further review, which we are in the process of completing.

I am most interested in any comments or reactions you have to the proposed Rule amendment and regarding any other justifications, rationale or argument that you can conceptualize that would meet some of the criticisms and could be used to further support the proposal. Of course, if you disagree, please let me know why. Maybe I am missing something, but I do not see a reasonable basis to oppose this proposed Rule amendment to R. 5:3-3(d).

An associate in my office is beginning the process of contacting the American Bar Association Family Law Section to determine what position that organization has taken

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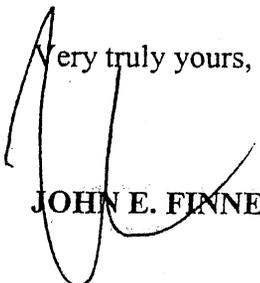
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with respect to the recommendations out of the Wing Foot conference requiring that experts who have disparate recommendations on custody must confer. She also will be conducting research on a broader scale nationally to determine other jurisdictions that may employ or similar procedure.

I look forward to communicating with you over the next month to discuss these issues and to share thoughts and opinions. I will let you know my Subcommittee's reaction to the Rule amendment pertaining to parenting monitors. Of course, the individual views of the Subcommittee members do not reflect the opinion of the Family Part Practice Committee.

Very truly yours,



JOHN E. FINNERTY

JEF:at

Enclosures

cc: Hon. Bradley J. Ferencz, J.S.C.
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