

NAELA JOURNAL

National Academy of Elder Law Attorneys • Volume 14 • Number 1 • Spring 2018

ARTICLES

**Eldercaring Coordination in Your Community or Your Law Practice:
New Approaches to Dealing With High-Conflict Families**
By Linda Fieldstone, M.Ed., and Sue Bronson, LCSW

Copyright © 2018 by the National Academy of Elder Law Attorneys, Inc. Any use of the contents of this publication without the express written permission of the publisher is strictly prohibited.

NAELA Journal (ISSN 1553-1686) is published twice a year by the National Academy of Elder Law Attorneys, Inc., 1577 Spring Hill Road, Suite 310, Vienna, VA 22182, and distributed to members of the Academy and to law libraries throughout the country.

Elder and Special Needs Law topics range over many areas and include: Preservation of assets, Medicaid, Medicare, Social Security, disability, health insurance, tax planning, conservatorships, guardianships, living trusts and wills, estate planning, probate and administration of estates, trusts, long-term care placement, housing and nursing home issues, elder abuse, fraud recovery, age discrimination, retirement, health law, and mental health law.

Articles appearing in *NAELA Journal* may not be regarded as legal advice. The nature of Elder and Special Needs Law practice makes it imperative that local law and practice be consulted before advising clients. Statements of fact and opinion are the responsibility of the author and do not imply an opinion or endorsement on the part of the officers or directors of NAELA unless otherwise specifically stated as such.

A subscription to *NAELA Journal* is available to law libraries for \$70 per year. A combined subscription to *NAELA News*, distributed four times a year, and *NAELA Journal* is available to law libraries for \$135 per year. Back issues of *NAELA Journal* and *NAELA News* are available to NAELA members and subscribing law libraries in electronic format on www.NAELA.org. Address changes or other requests regarding subscription information should be directed to Nancy Sween, Sr. Director of Communications and Publications, nsween@naela.org.

Eldercaring Coordination in Your Community or Your Law Practice: New Approaches to Dealing With High-Conflict Families

By Linda Fieldstone, M.Ed., and Sue Bronson, LCSW

I. Introduction	2
II. Elder Rights and Family Dynamics	2
III. Less Intrusive Resolution Options: Life Care Planning and Elder Mediation ...	4
IV. Families in High Conflict Require a Different Approach.....	6
V. Eldercaring Coordination: Development and Implementation of a New Approach.....	9
A. Concept.....	9
B. Qualifications, Guidelines, and Ethics	10
C. Pilot Sites and Research	10
D. Benefits.....	11
VI. Conclusion	13

About the Authors

Linda Fieldstone, MEd, is former Supervisor of Family Court Services for the 11th Judicial Circuit, Florida, Miami-Dade County. Her leadership roles include serving as past president of the Association of Family and Conciliation Courts (AFCC); past president of the Florida Chapter of AFCC (FLAFCC); secretary of the AFCC Task Force on Parenting Coordination 2005; current member of the AFCC task force to update standards; and member of the Florida Supreme Court Rules and Policies Committee. She is involved in research, training, and consultation internationally and has written articles on high-conflict families, family court services, empirically based parenting plans, and parenting/eldercaring coordination. Ms. Fieldstone is currently co-chair of the Association for Conflict Resolution (ACR) and FLAFCC Elder Justice Initiatives on Eldercaring Coordination and serves the community through Family Resolutions, LLC, to provide conflict resolution opportunities directly to families of all ages before, during, or after court actions.

Sue Bronson, MS, has been a mediator, trainer, and psychotherapist in private practice in Milwaukee, since 1983, where she mediates family, elder, workplace, and other disputes. With more than 30 years of mediation experience helping people engage in quality conversations, Ms. Bronson, a Licensed Clinical Social Worker (LCSW), teaches mediation at the University of Wisconsin–Milwaukee School of Continuing Education and is co-chair of the ACR Elder Justice Initiative on Eldercaring Coordination. Her national leadership roles include serving as a charter member of the Wisconsin Association of Mediators, member of the Academy of Family Mediators board, past chair of the ACR Family Section, and past co-chair of the ACR Elder Section. Currently, Ms. Bronson serves as a committee chair on the American Bar Association Task Force on Elder Abuse Screening Tool for Elder Mediators.

The authors gratefully acknowledge NAELA and Amelia Crotwell, CELA, Elder Law of East Tennessee, for providing the opportunity to write this article.

I. Introduction

When adult siblings face the challenge of making decisions on behalf of an aging parent, family conflict can intensify with new heated battles or the eruption of agitation that has been simmering under the surface for years. Historically, conflict resolution options have not been available for families in these exceedingly stressful situations. High-conflict families instead spend inordinate amounts of court system time and resources to resolve their conflicts. In a groundbreaking collaboration, 20 organizations from the United States and Canada were convened by an Association for Conflict Resolution (ACR) task force to rectify this issue, working with statewide entities through the Florida Chapter of the Association of Family and Conciliation Courts (FLAFCC) to develop what is called “eldercaring coordination.” Eldercaring coordination focuses on reducing conflict for families so that court proceedings can flow smoothly, without constant disruptions involving nonlegal issues, which may jeopardize the care and safety of elders. Eldercaring coordination helps families refocus on the elder and use available resources, including legal representation, to ensure the care and safety of their elder generation.

Family conflict is deeply embedded in family systems and can span lifetimes. Particularly as adult children are called upon to provide care to frail and aging parents, decades-old conflicts rise to the surface and manifest in disagreement about how and when care should be provided as well as who will provide care and who will make decisions. Although old disputes may underlie the family construct, a parent’s decline, the needs of the parent for care, and the constant decisions and demands on a caregiver often lead to additional stress and stimulate further discord.

Adult children often find themselves in court arguing over who will ultimately make decisions for a parent. The court then becomes the well-intended but inefficient micromanager of the elder’s care. The adversarial court arena is the most traditional avenue to address conflict, although it may be expensive, time-consuming, and inefficient, which may not result in the best and most timely decisions for the elder. It also often involves removal of the elder’s rights based on competency findings, which may not have been necessary if the conflict among adult children had not arisen. The litigation approach becomes a punitive measure for the elder, drains time and capital from the family, and strains already scarce judicial resources. This article explores family dynamics and introduces eldercaring coordination as an innovative dispute resolution process for high-conflict families. The authors recommend the development of additional pilot sites to introduce this option in guardianship and family courts in other jurisdictions.

II. Elder Rights and Family Dynamics

Providing care to older adults, without diminishing their dignity, requires an appreciation of elders’ strengths and beliefs throughout their lives and an accurate assessment of their current condition. Elders have rights and wishes that should be respected, yet if they have an advanced chronic disease, they may lack decision-making capacity and/or the ability to articulate their preferences. Perceptions of an elder’s wishes or evidence of cognitive decline can differ among family members for various reasons, from lack of information to greed.

When assuming the role of caregiver, it is not always easy to elicit and honor the elder’s preferences. Is there consensus

among family members on the understanding of this unique individual's quality of life? The literature demonstrates significant discrepancies within families in understanding older adults' preferences.¹ Even if the elder's wishes are known, the older adult and the caregiver often have different goals. Predictably, goals of efficiency, safety, and autonomy may be at odds with one another.

When an older adult attempts to act on a goal and meets resistance from his/her caregiver (i.e., because the caregiver has a different goal), the older adult may attempt to influence care by resisting the caregiver's suggestion and insisting or persisting in acting on his/her original goal, acting in a way that is commonly attributed to stubbornness.²

As conditions change, the need for new decisions arises. How does the family foster self-determination and yet provide safeguards for the current circumstances? What are the family resources in terms of time and money? For how long will these resources last?

Family caregiving is also influenced by values, culture, and ethnicity, including beliefs about gender roles, caregiving practices, and the status of family members. It is not surprising that the research acknowledges how common it is to have periodic family conflicts about caring for

a family member.³ Although family conflict may surround issues of elder care, this conflict may actually reflect other personal and family dynamics.⁴ In *The Tempest*, William Shakespeare said, "What's past is prologue."⁵ Sibling relationships influence the emotional climate of childhood and contribute to patterns of behavior in later life.⁶ Sibling relationships are multifaceted, in which intimacy, ambivalence, and conflict coexist. Two researchers concluded, "The more siblings you may have, at any age or in any generation, the more likely you are to have one you do not get along well with."⁷ We know from our own experiences that conflict continues to evolve due to changing relationships, disagreements, disrespect, and "unreason-

1 A.M. Reamy, K. Kim, S.H. Zarit, et al., *Understanding Discrepancy in Perceptions of Values: Individuals With Mild to Moderate Dementia and Their Family Caregivers*, 51(4) *Gerontologist* 473 (2011); K.L. Fingerman, *Aging Mothers and Their Adult Daughters: A Study in Mixed Emotions* (Springer Publ. 2001).

2 A.R. Heid, S.H. Zarit & K. Van Haitsma, *Older Adults' Influence in Family Care: How Do Daughters and Aging Parents Navigate Differences in Care Goals?* 20(1) *Aging & Mental Health* 46, 47 (2016).

3 W. Strawbridge & M. Wallhagen, *Impact of Family Conflict on Adult Child Caregivers*, 31 *Gerontologist* 770 (1992); L. Davis, *Family Conflicts Around Dementia Home-Care*, 15(1) *Fams. Sys. Health* 85 (1997); A. Scharlach, W. Li & T.B. Dalvi, *Family Conflict as a Mediator of Caregiver Strain*, 55(5) *Family Relations* 625 (2006).

4 E. Cox & R. Parsons, *Empowerment-Oriented Social Work Practice With the Elderly* 171 (Cole Publ. 1994); B. Lashewicz & N. Keating, *Tensions Among Siblings in Parent Care*, 6 *European J. Ageing* 127, 134 (2009).

5 *The Tempest*, Act 2, Scene 1, in *The Complete Works of William Shakespeare*, <http://shakespeare.mit.edu/tempest/index.html> (accessed Dec. 4, 2017).

6 K. Monahan, *Themes of Adult Sibling Sexual Abuse Survivors in Later Life: An Initial Exploration*, 38 *Clinical Soc. Work J.* 361 (2010); L. Esau, *The Experience of the Black Sheep in the Family: The Lived Experience of the Black Sheep in the Family*, Alliant International University, ProQuest Dissertations Publishing (2013); C. Podgorski & D.A. King, *Losing Function, Staying Connected: Family Dynamics in Provision of Care for People With Dementia*, 33(1) *Generations: J. Am. Soc. Aging*, 24 (2009).

7 G. Greif & M. Woolley, *Adult Sibling Relationships*, 67 Columbia U. Press (2016).

able” demands. Under stressful circumstances, a family member may be inclined toward rescuing, raging, or resistance. To reduce their burdens, some may choose to shut down or pull away when they are needed the most. Individual attempts at self-protection can be viewed as manipulative, lazy, or power grabbing. The control continuum (between hierarchy and equality) and the connection continuum (desire for closeness or distance) “are inextricably intertwined.”⁸ Moments of criticism and blame are all too common.

The consequences of family conflict often ripple beyond the elder’s care. Family disagreements and conflicts exacerbate caregiver strain and negatively impact the caregiver’s health.⁹ If the elder’s medical conditions worsen, stays at hospitals and rehabilitation centers are likely. For older patients in particular, transitions between health care settings are a high-risk period for care quality and patient safety.¹⁰ Health care professionals and hospice teams identify family conflict as hindering the effective provision of care for the elder at end of life and as increasing elder, family, and/or team member distress.¹¹

Family conflict is a frequent reason

for filing of guardianship cases.¹² Legal and medical professionals often feel ill-prepared to address conflict because little education and training in family system concepts or family conflict intervention is provided to them. A different skill set or expertise may be sought, such as that of a social worker. But is that enough for high-conflict cases?

When all else fails, the social worker is the one who is called in to decompress and resolve the situation Although social workers spoke about conflict resolution, it was not clear whether they felt that they had the skills to deal with severe cases of conflict (that is, when families became overly hostile).¹³

III. Less Intrusive Resolution Options: Life Care Planning and Elder Mediation

In cases with low to moderate levels of conflict, a facilitated family meeting to exchange information and promote understanding of the elder’s care needs and preferences can enhance communication and problem-solving among family members and professionals.

The Life Care Planning Law Firms Association¹⁴ offers an approach to enable an elder law practice to address disputes earlier in the life care planning process. Amelia Crotwell, CELA, of Elder Law of East Tennessee, explains that the practice model requires the elder law firm to have a designated life care coordinator for each

8 D. Tannen, *I Only Say This Because I Love You*, 69 Random House (2001).

9 Scharlach et al., *supra* n. 3; R. Schulz & S. Beach, *Caregiving as a Risk Factor for Mortality: The Caregiver Health Effects Study*, 282(23) JAMA 2215 (1999).

10 E.A. Coleman, *Falling Through the Cracks: Challenges and Opportunities for Improving Transitional Care for Persons With Continuous Complex Care Needs*, 51(4) J. Am. Geriatric Soc. 549 (2003).

11 H. Bridgman & E. Carr, *Providing Family Care in Hospital*, 94 Nursing Times 44 (1998); L. Holst, M. Lundgren, L. Olsen, et al. *Dire Deadlines: Coping With Dysfunctional Family Dynamics in an End-of-Life Care Setting*, 15(1) Intl. J. Palliative Nursing 34 (2009).

12 M.A. Iris, *Guardianship and the Elderly: A Multi-Perspective View of the Decision-Making Process*, 28 Gerontologist 39 (1988).

13 J. Sims-Gould, K. Byrne, E. Hicks, et al., *When Things Get Really Complicated, We Call the Social Worker”: Post-Hip Fracture Care Transitions for Older People*, 40(4) Health Soc. Work 257, 260–261 (2015).

14 Life Care Plan. L. Firms Assn., www.LCPLFA.org (accessed Nov. 28, 2017).

elder client.¹⁵ This person may be a social worker, geriatric care manager, nurse, or other expert. Care concerns can be part of overall planning, thereby moving the focus from documents, money, or asset protection to a holistic care-centered objective.¹⁶ The life care planning model brings care coordination to the center of the elder law practice. Life care planners make sure that the elder receives appropriate care in the most advantageous or desired environment, whether home- or facility-based, with the objective of helping the elder keep a desired quality of life. Public and private resources are tapped to ease the financial burden of long-term care. Family members are educated about care needs, disease progression, injury prevention methods, and communication to avoid conflict. However, it is essential that family members are on board with the life care planning process if it is going to be effective, because there may be questions or feelings about conflicts of interest related to whom the firm is advocating for depending on who the real client is.

Reaching a family decision can help avoid delays in providing the elder with necessary treatment or services or help the elder transition to a new environment with less stress. However, in high-conflict situations, life care planners may be perceived as having bias, advocating for the paying client. The life care planning professional can easily get pulled into the dynamics of splitting and demonizing among family members. This happens when family

members divide themselves into factions, build separate coalitions, and question and disparage everything advocated by any faction to which they do not belong. In a letter to Christine M. Durham, chief justice of the Utah Supreme Court, George M. Harmond, chair of the Utah Judicial Council's Ad Hoc Committee on Probate Law and Procedure, states:

We classify guardianships and conservatorships as probate cases, but they have more in common with family law cases than with the intergenerational transfer of property. They share many of the emotional and financial issues of divorce. The court defines future family relationships.¹⁷

Mediation has become a standard practice in family courts to assist in the creation of parenting plans for disputing parents with minor children. Elder mediation is slowly developing in courts and communities to give disputing parties in an elder's case an opportunity to work out differences and explore options to avoid a court judgment and restrictions of the elder's rights. Research on adult guardianship mediation programs has been positive.¹⁸ Training standards are an important part of setting expectations for elder

15 Email from Amelia Crotwell, CELA, Elder L. of E. Tenn., NAELA member, ACR Taskforce on Eldercaring Coordination (June 20, 2017, 7:21 p.m.).

16 P.C. Sisson, *Life Care Planning: The Comprehensive Elder Law Approach to Planning for the Chronic Care Needs of Seniors*, 51 *Advocate* 23 (2008).

17 Utah St. Cts., Admin. Off. of the Cts., *Ad Hoc Committee on Probate Law and Procedure: Final Report to the Utah Judicial Council* iv, <http://www.utcourts.gov/committees/adhocprobate/Guardian.Conservator.Report.pdf> (Feb. 23, 2009).

18 S.L. Butterwick, P.A. Hommel & I. Keilitz, *Evaluating Mediation as a Means of Resolving Adult Guardianship Cases: A Report Submitted by the Center for Social Gerontology to the State Justice Institute* (Ctr. for Soc. Gerontology Oct. 2001); British Columbia L. Inst. & Canadian Ctr. for Elder L. Stud., *Elder Guardianship Mediation: A Report Prepared by the Canadian Centre for Elder Law* (CCELS Rpt. 5) (Jan. 2012).

mediators. The ACR Section on Elder Decision-Making and Conflict Resolution Committee on Training Standards developed training objectives to orient mediators to the issues and skills necessary to enter the practice of elder mediation.¹⁹ Standards for quality training in elder mediation are also reminders of the importance of such standards for all programs striving for quality.²⁰

IV. Families in High Conflict Require a Different Approach

Although mediation often successfully resolves moderate conflicts between family members who are willing to work together, it is not suitable for every case. According to researcher Alexandra Crampton:

Mediation alone was insufficient to encourage a highly dependent parent to frankly identify her needs, to make high conflict families more willing to work together, or to make a party who had petitioned the court's decision-making power to then appreciate opportunity to share power in decision-making with rival parties.²¹

Crampton suggests alternative models that include "addressing conflict dynamics

and family history, which may underpin power struggles and derail the empowering potential of mediation."²² In high-conflict families, incredible determination may keep people from listening and learning about another's suffering. At times, the skill of empathy may be hampered by a person's mental illness and/or brain development or deterioration. Patterns over decades may enable coercive dynamics to continue.

Conflict reduction is central to the elder's care and safety and enables the elder to thrive to the maximum extent possible. Although family members may use the court arena to fight out their battles, many of their issues are not legal matters. Family resources, time, and energy may be exhausted through relitigation when, instead, the family may require assistance with establishing boundaries and clarifying needs and interests.

Family courts have long recognized that approximately 10 percent of their cases absorb 90 percent of judicial time.²³ Those cases, recognized as high conflict, have been depicted as involving long-term communication problems, in which personal unresolved issues continually interfere with family member interactions. These families have been identified as highly litigious, immersed in multiple cross allegations, and ambivalent about the outcome of their cases. They may also

19 For training objectives and commentary, see Assn. for Conflict Res. Sec. on Elder Decision-Making & Conflict Res. Comm. on Training Stands., *Elder Care and Elder Family Decision-Making Mediation: Training Objectives and Commentary*, http://acrelldersection.weebly.com/uploads/3/0/1/0/30102619/eldercareobjectives_7_30_2012.pdf (July 30, 2012) (accessed Nov. 28, 2017).

20 E.C. Lanier, *What Is Quality in Elder Care Mediation and Why Should Elder Law Advocates Care?* 32(2) BIFOCAL (B. Assns. in Focus on Aging & the L.) 15 (2010).

21 A. Crampton, *Elder Mediation in Theory and Practice: Study Results From a National Caregiver Mediation Demonstration Project*, 56(5) J. Gerontological Soc. Work 423, 434 (2013).

22 *Id.*

23 R. Neff & K. Cooper, *Progress and Parent Education: Parental Conflict Resolution*, 42(1) Fam. Ct. Rev. 99 (2004); M. Mitcham-Smith & W.J. Henry, *High-Conflict Divorce Solutions: Parenting Coordination as an Innovative Co-Parenting Intervention*, 15(4) Fam. J.: Counseling & Therapy for Couples & Fams. 368, 368 (2007); A. Thompson, *The Use of Alternative Dispute Resolution in Civil Litigation in Kansas*, 12 Kan. J. L. Pub. Policy 351, 353 (2002–2003).

display serious pathology or present safety issues for the elder. Past trauma and current grief further complicate feelings and motivate retaliatory actions.²⁴

In families with older members, the source of anger may be deep-rooted in childhood experiences and years of disappointments, which remain their principal motivation for their current hostile interactions.²⁵

Mediation and even the court's attention appear to give angry family members and other stakeholders a chance to vent, intensifying their anger rather than sublimating it. Similar to high-conflict parents involved in court proceedings regarding their younger children, family members involved in a court process regarding an elder bring personal interests that may sabotage the very person they are arguing about: the elder. Thus, family members in conflict regarding an elder appear to be fixed on blame and vendettas, rather than solutions, unable to focus on the current needs of the elder. Their personal agendas may impede the care of the elder, delay medical treatment, and jeopardize the elder's overall safety. When family members continue to advocate for themselves, they may lose sight of how the elder is being affected by their conflict. Because court processes can be lengthy and expensive, family fissures could eventually break, leaving some family members feeling excluded from the family by choice or consequence. This includes children, who have a procliv-

ity to reproduce the conflict they witness as they age and form their own families. The potential collateral damage in these cases is next generations losing access to part of their family tree.

The general adversarial nature of our court system often exacerbates family conflict, thus validating black-and-white thinking and perpetuating each family member's view of the "opposing" party as the enemy. In order to "win," parties may exaggerate or embellish the truth. Negative memories may produce distorted recollections and false allegations.²⁶ According to research, court processes leave high-conflict families feeling more polarized, disappointed, and frustrated.²⁷ For high-conflict families, a court proceeding may actually be the critical juncture that reduces the chance for resolution.

The varying degrees of conflict in these cases can be used to connect elders and families with the dispute resolution process most suited to their needs. Eldercaring coordination is now available to address cases with the greatest degree of animosity and give elders and families a last option to avoid counterproductive court outcomes. Table 1 compares the case management, elder mediation, and eldercaring coordination approaches to addressing conflicts that arise in situations involving elder caregiving and decision-making.

The ACR Task Force on Eldercaring Coordination was formed in 2013 to create

24 Mitcham-Smith & Henry, *supra* n. 23, at 368–369.

25 B. Lashewicz & N. Keating, *Tensions Among Siblings in Parent Care*, 6 *European J. Ageing* 127 (2009); J.J. Suito & K. Pillemer, *Sources of Support and Interpersonal Stress in the Networks of Married Caregiving Daughters: Findings From a 2-Year Longitudinal Study*, 51 *J. Gerontology: Soc. Sci.* 297 (1996).

26 Mitcham-Smith & Henry, *supra* n. 23 at 369; J.B. Kelly, *Psychological and Legal Interventions for Parents and Children in Custody and Access Disputes: Current Research and Practice*, 10(1) *Va. J. Soc. Policy L.* 129 (2002).

27 G. Firestone & J. Weinstein, *In the Best Interests of Children: A Proposal to Transform the Adversarial System*, 42(2) *Fam. Ct. Rev.* 203, 204 (2004).

Table 1. Options for Elder Care Dispute Resolution

Family Conflict Level	Possible Indicators	Resolution Process Options
Prevention/Mild Conflict	<ul style="list-style-type: none"> • Tolerance for differences • General cooperation • Need for information and resources 	<p>Case Management Social worker, nurse, aging life care professional (formerly geriatric care manager), or life care planning law firm that hires care coordinators</p> <p><i>For information:</i></p> <ul style="list-style-type: none"> • Aging Life Care Association, https://www.aginglifecare.org • Life Care Planning Law Firms Association, www.LCPLFA.org
Moderate Conflict	<ul style="list-style-type: none"> • See indicators above and in High Conflict • Involvement of lawyers in nonlegal issues • Focus on blame • Devaluing of others important to elder • Sibling splitting 	<p>Elder Mediation</p> <p><i>For information:</i></p> <ul style="list-style-type: none"> • ACR Elder Mediation Section, http://acrelldersection.weebly.com • Mediate.com, www.mediate.com
High Conflict	<ul style="list-style-type: none"> • Entrenchment • Difficulty separating elder’s needs from personal desires • Possessive or controlling behavior toward the elder • Possible endangerment of elder; safety concerns • High degree of rigid thinking 	<p>Eldercaring Coordination</p> <p><i>For information:</i></p> <ul style="list-style-type: none"> • Florida Eldercaring Coordination, High Conflict Dispute Resolution Process for Elders and Families, http://www.eldercaringcoordinationfl.org

a model for elders and their family caregivers based on the child-centered parenting approach used in the court system to assist high-conflict parents navigating separation or divorce. Although the option of “parenting coordination” has been available for high-conflict parents involved in family courts, there has not been a comparable dispute resolution alternative for families in conflict regarding an elder.²⁸ The 20 U.S./Canadian organizations comprising the

ACR Task Force (see Table 2) worked concurrently and collaboratively with 20 state-wide organizations in the FLAFCC Task Force to create eldercaring coordination as a more humane and effective response for elders and families in high-conflict situations. The ACR Task Force developed a rubric for applying dispute resolution techniques to help families refocus from conflict to a trauma informed elder-centered approach for fulfilling the elder’s needs. With an intervention specifically created for such a high-conflict situation, the participants (e.g., siblings, spouses, children, extended family members, friends, guardians, attorneys) would have an opportunity to become a support system for the elder

28 L. Fieldstone, *White Paper: The Concept of Eldercaring Coordination: Applying Parenting Coordination to High Conflict Cases Regarding Elders*, distributed by Assn. for Conflict Res. & Fla. Ch. Assn. of Fam. & Conciliation Cts. (2012).

Table 2. ACR Task Force on Eldercaring Coordination

The following organizations composed the ACR Task Force on Eldercaring Coordination, which was instrumental in the development of eldercaring coordination and provided support for the initial pilot sites and inaugural training for eldercaring coordination. Statewide experts participated in an advisory capacity as needed.

- AARP (formerly American Association of Retired Persons)
- Alternative Dispute Resolution Institute of Canada
- American Association for Marriage and Family Therapy
- American Bar Association Commission on Law and Aging
- American Bar Association Dispute Resolution Section
- American Psychological Association
- Association for Conflict Resolution
- Association of Family and Conciliation Courts
- Elder Justice Coalition
- National Academy of Elder Law Attorneys
- National Adult Protective Services Association
- National Aging Life Care Association
- National Association of Area Agencies on Aging
- National Association of Social Workers
- National Center for State Courts
- National College of Probate Judges
- National Committee for the Prevention of Elder Abuse
- National Council of Juvenile and Family Court Judges
- National Guardianship Association
- National Guardianship Network

and effective resource for themselves and the court, fostering emotional healing and collaborative decision-making during this difficult transitional period.

V. Eldercaring Coordination: Development and Implementation of a New Approach

A. Concept

As indicated previously, the ACR and FLAFCC task forces constructed eldercaring coordination as a dispute resolution model to manage high-conflict family dynamics. In 2015, the ACR Task Force published the ACR Guidelines for Eldercaring Coordinators, which sets forth the protocols and training guidelines for eldercaring coordinators (ECs) and pilot projects.²⁹ The guidelines define eldercaring coordination as follows:

[A] conflict resolution process where ECs assist elders, legally authorized decision-makers, and others who participate by court order or invitation, to resolve disputes with high conflict levels that impact the elder's autonomy and safety by:

- Enabling more effective communication, negotiation and problem-solving skills;
- Offering education about elder care resources;
- Facilitating the creation and implementation of an elder care plan;
- Making recommendations for resolutions; and
- Making decisions within the scope of a court order or with the parties' prior approval.³⁰

Following are the goals of eldercaring coordination:

- Help manage high-conflict family dy-

²⁹ L. Fieldstone, S. Bronson & M. Morley, *Association for Conflict Resolution Guidelines for Eldercaring Coordinators*, 53(4) Fam. Ct. Rev. 545 (2015).

³⁰ L. Fieldstone & S. Bronson, *Association for Conflict Resolution Guidelines for Eldercaring Coordination: From Conflict to Collaboration Toward the Care and Safety of Elders*, 32 Conflict Res. Q. 413 (2015), doi: 10.1002/crq.21124.

namics so that the elder, family, and stakeholders can address their nonlegal issues independently from the court;

- Ready the elder and family to work with collaterals to address medical and financial issues, thus avoiding delays and resulting in better decisions for the elder;
- Foster self-determination of the elder and family for as long as possible;
- Provide a support system for the elder and family during times of transition; and
- Ease the burden on the legal system from litigation regarding non-legal issues concerning elders.³¹

B. Qualifications, Guidelines, and Ethics

Responsible execution of the eldercaring coordination process is of utmost concern to the organizations in both task forces. The ACR Task Force developed an overarching framework, including Foundational Ethical Principles,³² to guide ECs in this new field. Working under the umbrella of those ethical principles, the EC becomes the dispute resolution manager for high-conflict families. Because the field itself is not yet regulated, quality control is crucial to protect the consumers, the courts, and the ECs. ECs are expected to address issues of the most litigious parties in the court; therefore, ECs' knowledge, experience, and training are analogous to a specialty in the field of conflict resolution, with demanding qualifications including substantial conflict resolution training. Based on the consensus that professional credentials, training, and experience are paramount to the success of this project, background for ECs includes training in family mediation, elder mediation, and

eldercaring coordination and extensive practical experience in a profession related to high conflict within families.

ECs work with the family system to reduce conflict and refocus on the elder's needs. While doing so, they address potential safety hazards with the elder and family and identify the elder's goals and priorities. Rather than concentrating on blame, they ask, "What would make the situation better?" or "How can that need be addressed going forward?" Eldercaring coordination uses a strength-based approach; the family system is stabilized by identifying and honoring each member's contributions and existing strengths to effect positive and sustainable change.³³ The EC recognizes that trauma-instigated responses may deter the family from reaching its goals and works in small steps to renegotiate behaviors that will be more productive and satisfying in the long run.

C. Pilot Sites and Research

In September 2015, five states became pilot sites to initiate eldercaring coordination into their courts: Florida, Idaho, Indiana, Ohio, and Minnesota. A pilot site is a location at which a judge or magistrate refers at least six cases to eldercaring coordination, or a group of attorneys commit to referrals to eldercaring coordination through agreed orders.³⁴ Pilot sites are eas-

31 Fieldstone, Bronson & Morley, *supra* n. 29; Fieldstone & Bronson, *supra* n. 30.

32 Fieldstone & Bronson, *supra* n. 30.

33 D. Dematteo & S. Reeves, *A Critical Examination of the Role of Appreciative Inquiry Within an Interprofessional Education Initiative*, 25 J. Interprofessional Care 203 (2011); J. Reed, E. Richardson, S. Marais, et al., *Older People Maintaining Well-Being: An International Appreciative Inquiry Study*, 3 Intl. J. Older People Nursing 68 (2008).

34 See Fla. Eldercaring Coordination, Assn. for Conflict Res., *ACR Initiative in PDF*, <http://www.eldercaringcoordinationfl.org/association-for-conflict-resolution.html> (accessed Nov. 28, 2017).

ily initiated through procedures honed by the current pilot site administrator, who may be the judge, judicial assistant, or case manager. Three training programs on eldercaring coordination have taken place thus far, two provided at the Ohio Supreme Court and one in Florida, which was underwritten by FLAFCC. A significant degree of support is given to pilot sites and their ECs, who collaborate through monthly calls and receive consultations upon request. The EC's payment is directed through a court order. Spark County, Ohio, has received a grant to provide two ECs to perform at no cost to the parties.

In an innovative effort to enhance eldercaring coordination as it progresses, the process is under initial study by Virginia Tech researchers Pamela Teaster, Director of the Center for Gerontology, and Megan Dolbin-MacNab, Director of the Marriage and Family Therapy Doctoral Program, through surveys of the ECs, elders, participants, and pilot sites.

It is interesting to note that there may be perceptual differences in the expectations of those participating in the process. Preliminary research indicates the following:

- ECs believe that the process is successful based on the participants' increased ability to respect the elder's voice when the EC assists with conflict resolution, thus reinforcing shared family goals and values.
- The court considers the eldercaring coordination process successful when a family is better able to focus on the elder, ensuring that the elder's needs are met, and when conflict and litigation is reduced, especially regarding nonlegal issues.
- The elders at the pilot sites were pursuing a reduction in family conflict,

resolution regarding their residence, and identification of the person who will spend time with them and who will make decisions.

- Parties and invited participants were seeking to reduce family conflict, ensure the psychological safety of the elder, and improve access to and decision-making regarding the elder.³⁵

These views are not surprising considering that the needs and perspectives of parties and invited participants depend on their relationship with the elder. Initial research has also shown that the eldercaring coordination process has uncovered potential risks and safety issues, including neglect, coercion, deception, exploitation, emotional and physical abuse, and the elder's vulnerability.

Research will continue to generate information regarding expectations and outcomes, demographics, progress, and effects of the eldercaring coordination process in general. The data will be used to inform the process as it continues in order to benefit the elders and participants, increase the efficacy of ECs, and enhance the work of the pilot sites.

D. Benefits

Table 3 highlights several benefits already observed by the pilot sites, ECs, elders, and participants throughout the process of eldercaring coordination.

In some cases, affordability has been an issue in areas where eldercaring coordination is not funded through the court or grants. However, when parties recognize that the cost is shared by all parties, rather

³⁵ Email from Megan MacNab, Ph.D., Dir. Doctoral Program on Marriage & Fam. Therapy, *Preliminary Eldercaring Coordination Data* (May 4, 2017, 4:10 p.m.).

Table 3. Eldercaring Coordination: Sample of Reported Benefits to Elders, Their Families, and Other Stakeholders (May 17, 2017)

General Benefit	Specific Benefits			
	Elder	Family	Stakeholder	Court
Fewer delays in medical treatment decisions	Treatment results improved; stress reduced	Worry, contention, and time needed for medical treatment reduced	Focus more productively on other issues	Emergency hearings on medical treatment and care reduced
Development of a person-centered care plan submitted as a settlement agreement	Expectations clarified; compliance greater in providing care and safeguarding elder's welfare	Family empowered in providing solutions for elder; contention reduced	Resource use increased and appropriate	Time in court reduced; judge's ability to see details not possible to present in a court order enhanced (e.g., specific treatment modalities, schedule and protocols for visitation between elder and family members)
Reduction of risks and increase in safety for elder and others participating in process	Rapport building provides opportunities to uncover secrets	Risks addressed and abuse reported when appropriate; threats reduced; safety issues addressed to enable modification of elder's residence	Appropriate referrals made and services initiated	Frivolous hearings reduced; emergency reports submitted when necessary
EC serves as liaison to share information when necessary	Door kept open to communication and information from/about elder	Collaboration promoted, even when parties cannot speak directly; adversarial component removed when parties contact their attorneys for nonlegal issues	Nonlegal issues addressed so that attorneys can tackle legal issues without constant disruptions; more effective use of resources	Informed out-of-court decision-making promoted when everyone has the same information

than assumed individually, they also realize that eldercaring coordination saves both time and money compared to litigation.

Perhaps the greatest success in eldercaring coordination occurs when a cognitive shift takes place within the family system

as it recognizes that the family's shared goal of providing dignity and care for the elder is more important than family members' past unresolved issues. This shift in attitude results in more cooperative behaviors among family members with the perceptual awareness that the family can

work as a team, sharing responsibilities however possible. Florida attorney and eldercaring coordinator Erika Dine offers valuable perspective:

As an EC, you have the ability to have a bird's eye view of contested matters. The EC, the elder, their families, and attorneys work together to create a plan that is "elder-centric." Elder caring coordination offers a forum for parties to learn information that discovery proceedings in litigation could slow down, impeding resolution and flaring up tempers and suspicion. Attorneys and their clients work within the process by sharing information and using resources beyond courtroom procedure. It can dispel hard lined positions of parties by separating fact and fiction. It encourages conversation beyond each party's "story" and directs the focus to the elder's wishes and needs and how to accomplish them within the family dynamic.³⁶

VI. Conclusion

As a consequence of the encouraging results generated thus far by the initial pilot efforts, eldercaring coordination is receiving interest from attorneys and judges across the United States and Canada. Judge Michelle T. Morley, Fifth Judicial Circuit, Florida, and co-chair of the FLAFCC Task Force on Elder caring Coordination observes:

Elder caring coordination is an excellent opportunity for lawyers to assist their clients in obtaining the relief that they seek. Once they sort out the non-legal issues from the

legal issues, lawyers can turn their own attention to the legal issues and encourage their clients to address their non-legal issues through eldercaring coordination. The emotional and personal grievances that clients harbor are often exacerbated in the courtroom.

Elder caring coordination gives parties the opportunity to vent those grievances in a confidential setting. It will enable clients to let go of those grievances and focus on the needs and welfare of their elder loved one instead. The lawyers can then more effectively assist clients unencumbered by emotional drama.³⁷

The end of life is a difficult and complicated time for elders and their families. When the family is in conflict, a unique approach is warranted to address the constant transitions and decision-making pressures. Elder caring coordination provides the court with a humane and dignifying approach when high conflict is an issue, giving the family an opportunity to replace its dysfunction with a support system that promotes the welfare and safety of vulnerable elders as it lays the foundation for more harmonious family interaction in subsequent generations.

Those interested in initiating elder caring coordination as a dispute resolution process for elders and their families are welcome to establish a new pilot site. Please contact the authors for details: LindaFieldstone@outlook.com and SBronson@wi.rr.com.

36 Email from E. Dine, Dine & Money maker, PLLC, & designated Elder caring Coord. for 12th Jud. Cir. Fla., *Quick EC Question* (Oct. 24, 2017, 11:22 p.m.).

37 Email from Michelle T. Morley, 5th Jud. Cir. Fla., Fla. Ch. Assn. Fam. & Conciliation Cts. Bd. Member, *Elder caring Coordination* NAELA Article (Oct. 2, 2017, 7:16 p.m.).