



**Florida Chapter of the Association
of Family and Conciliation Courts**

**GUIDELINES FOR
ELDERCARE COORDINATION**

Developed by

**The Florida Chapter of the Association
of Family and Conciliation Courts
Task Force on Eldercare Coordination**

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Florida Chapter of the Association of Family and Conciliation Courts
GUIDELINES FOR ELDERCARING COORDINATION

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Appendix Items are available upon request.

**Florida Chapter Of The Association Of Family And Conciliation Courts
Task Force On Eldercaring Coordination**

GUIDELINES FOR ELDERCARING COORDINATORS

FOREWARD

The Florida Chapter of the Association of Family & Conciliation Courts (FLAFCC) is dedicated to the development of court procedures that emphasize effective methods of resolution of family disputes. The leadership of FLAFCC recognizes that the potential benefits for parties and the court will become even more relevant since the number of baby boomers reaching 65 years of age will double from 2008 to 2030; even more so in Florida, which has the greatest percentage of elders in the United States, 17.3 per cent (U.S. News and World Report, January 2012). The FLAFCC leadership is also aware that the Florida courts recognize both children and elders as vulnerable populations, with circuit divisions created to address the issues of each. However, while parenting coordination is utilized throughout the state for high conflict cases pertaining to child-related issues, there is currently no dispute resolution option dedicated to high conflict eldercare situations, including potential abuse issues.

Parenting coordination has been endorsed by section 61.125 Florida Statutes, Florida Family Law Rules of Procedure 12.742 and 15.000, Rules for Qualified and Court-Appointed Parenting Coordinators, and Florida Supreme Court Administrative Order No. AOSC14-64 In Re: Parenting Coordinator Application Form and Training Standards. The Board of Directors of FLAFCC envisioned eldercaring coordination as a model for use in probate/guardianship cases when high conflict dynamics interfere with the best interests of the elder, limit their adherence to court orders, impede their court process, and detract from the efficacy of guardianship and other appointments by the court.¹ Therefore, in March 2013 the FLAFCC Board of Directors approved the creation of a Task Force on Eldercaring Coordination (“FLAFCC Task Force”) with the following mission:

To develop a dispute resolution option specifically for high conflict cases involving issues related to the care and needs of elders in order to complement and enhance, not replace, other services such as provision of legal information or legal representation, individual/family therapy, medical, psychological or psychiatric evaluation or mediation.

¹ Florida Statute 61.125 defines parenting coordination as “a child-focused alternative dispute resolution process whereby a parenting coordinator assists the parents in creating or implementing a parenting plan by facilitating the resolution of disputes between the parents by providing education, making recommendations, and, with the prior approval of the parents and the court, making limited decisions within the scope of the court’s order of referral.” The parenting coordinator understands the dynamics and effects of high conflict on children and families and works with the parties as well as collaterals (i.e. therapists, evaluators, treatment centers, mediators, attorneys, etc.) to ensure that court orders are implemented and the family is working productively with their support systems. Since the parenting coordinator avoids all conflicts of interest, including dual roles with the parties, there is no hidden agenda and trust in the process can be maintained more easily with all parties involved. In a study of cases referred to Family Court Services of the 11th Judicial Circuit of Florida in 2006, there was a 75% reduction of motions in cases during the first year that the parenting coordinator was appointed [Henry, W.J., Fieldstone, L., Thompson, M., Treharne, K. (2011). Parenting coordination as an antidote for high conflict divorce and court re-litigation. *Journal of Divorce and Remarriage*, 52(7), 455-471].

Learning from the processes that led to the development of parenting coordination, Linda Fieldstone, former President of FLAFCC and its parent organization the Association of Family and Conciliation Courts (AFCC), had approached FLAFCC about the concept of “eldercaring coordination.” Hon. Michelle Morley was appointed by FLAFCC President Sandy Karlan to Co-Chair the FLAFCC Task Force on Eldercaring Coordination along with her. The Co-Chairs convened a group of interested statewide stakeholders to develop this dispute resolution option to address elder issues. Eldercaring coordination would focus on reducing the level of conflict so that family members and stakeholders are better able to focus more productively on the issues at hand concerning the elder and work with others in their support system to provide health care, legal advice, advance directives, guidance and planning. The following statewide organizations or entities designated representatives for the Task Force:

Department of Children and Families Adult Protective Services
Elder Justice Center
Florida Association for Marriage and Family Therapy
Florida Attorney General’s Office
Florida Bar Elder Section
Florida Chapter of the Association of Family and Conciliation Courts
Florida Chapter of the National Association of Social Workers
Florida Coalition Against Domestic Violence
Florida Dispute Resolution Center
Florida Health Care Association
Florida Legal Services
Florida Psychological Association
Florida State Guardianship Association
Florida State Ombudsman
National Association of Professional Geriatric Care Managers
National Patient Advocate, Inc.
Mediation Training Group
Office of the Public Guardian
Stetson University College of Law Center for Excellence in Elder Law
University of South Florida Conflict Resolution Collaborative
(See Appendix D for names of representatives.)

In order to assist the FLAFCC Task Force with its mission, an FLAFCC Eldercaring Coordination Advisory Committee was also created, composed of Florida experts in related fields to support the work of the FLAFCC Task Force. Additionally, the Association for Conflict Resolution (ACR) Task Force on Eldercaring Coordination, with representatives of national organizations and entities as well as Canadian interests, worked concurrently and collaboratively with the FLAFCC Task Force. Accordingly, each Task Force benefitted from the work of the other. The ACR Task Force provided general guidance and overarching advice, while the FLAFCC Task Force demonstrated how states could apply those recommendations to their specific needs and characteristics.

Both Task Force projects were divided into three stages:

- Stage One to complete a work product which includes a definition for eldercaring coordination, qualifications for those facilitating the process, ethical guidelines, a template for Court Eldercaring Coordination Project Proposals, and a grievance process;
- Stage Two to disseminate the work product to the Florida Circuit Courts, professionals and the public through articles and presentations; seek sources of funding including grant

opportunities, and implement an assessment component for those cases entering into the process;

- Stage Three to assess the process, revise work product and disseminate the results.

The FLAFCC Task Force and ACR Task Force propose that the process of eldercaring coordination will:

- help manage high conflict family dynamics so that the elder, family and stakeholders can address their non-legal issues independently from the court, and court will not have to micromanage their family decision-making;
- ready the elder and family to work with collaterals to address medical and financial issues, avoiding delays and resulting in better decisions for the elder;
- promote the self-determination of the elder to the extent of his or her ability as fully as possible;
- provide a support system for the elder and family during times of transition;
- promote safety by monitoring situations at high risk for abuse or neglect;
- free precious judicial time to address matters for which dispute resolution processes have been unavailable or have been ineffective;
- promote interdivisional court collaborations to conserve court and community resources
- enhance the definition and perception of “family” within the court to include older families with aging parents;
- expand the use of “coordination” as a dispute resolution method to address high conflict cases involving various situations and issues.

On October 5, 2014, the Board of Directors of ACR voted unanimously to approve the ACR Task Force work product, posted in the Elder Section of the ACR website. The ACR Guidelines for Eldercaring Coordinator were formally endorsed by the Association of Family and Conciliation Courts on November 6, 2014, and can be found on the AFCC website at AFCCnet.org under Resource Center Practice Guidelines and Standards.

On November 10, 2014, the Board of Directors of FLAFCC approved the Florida Chapter of the Association of Family and Conciliation Courts Guidelines for Eldercaring Coordination.

The FLAFCC Guidelines for Eldercaring Coordination include the following:

1. Ethical Guidelines for Eldercaring Coordination
2. Recommended Grievance Procedure
3. Eldercaring Coordination Training Guidelines and Protocols
4. Court Rule Proposal Template, including standardized forms
5. Eldercaring Coordination Project Assessment Tool/Pre- and Post Surveys for Elders, other participants and the Eldercaring Coordinator

An independent Eldercaring Coordination Project Assessment Team will utilize the information obtained from participating Court Pilot Project sites to continue to enhance the development of the eldercaring coordination process. Analysis conducted will be provided to the Project sites on an interim basis to inform improvements to the process throughout its implementation. The success of this project may be assessed by:

- Reduction in hearings before the court in cases referred to eldercaring coordination;

- Review of Eldercaring Coordination Survey given to the participants in eldercaring coordination;
- Instances of reports of elder abuse, neglect, and exploitation;
- Increased use of community resources (e.g. physicians, attorneys, guardians, elder mediators, health care, psychosocial and financial experts, geriatric care managers, etc.) to assist the elder and family;
- A project design that can be replicated statewide and nationally by other circuits interested in pursuing project goals and objectives.

GUIDELINES FOR ELDERCARE COORDINATION

OVERVIEW AND DEFINITION OF ELDERCARE COORDINATION

These guidelines apply to all qualified eldercare coordinators and court appointed eldercare coordinators. A qualified eldercare coordinator is any one who has been approved by the court to serve as a qualified eldercare coordinator or to be on a qualified eldercare coordination panel for any circuit, according to the following requirements:

Qualifications of an Eldercare Coordinator. An eldercare coordinator is an impartial third person whose role is to assist parties to resolve disputes in a manner that respects the elder's need for autonomy and safety. Unless there is a written agreement between the parties, the court may appoint only a qualified eldercare coordinator.

To be qualified, an eldercare coordinator must:

1. Meet one of the following professional requirements:
 - a. Be licensed as a mental health professional under Chapter 491 with at least a master's degree in the professional field of practice;
 - b. Be licensed as a psychologist under Chapter 490;
 - c. Be licensed as a physician under Chapter 458;
 - d. Be licensed as a nurse under Chapter 464 with at least a master's degree in the professional field of practice;
 - e. Be certified by the Florida Supreme Court as a family law mediator with at least a master's degree in the professional field of practice;
 - f. Be a member in good standing of The Florida Bar; or
 - g. Be a professional guardian as defined by section 744.1085, Florida Statutes, with at least a master's degree in the professional field of practice.
2. Complete all of the following:
 - a. Three years of postlicensure or postcertification practice;
 - b. A family mediation training program certified by the Florida Supreme Court;
 - c. An elder mediation training that meets the standards approved and adopted by the Association for Conflict Resolution; and
 - d. An eldercare coordination training that meets the standards contained herein (Appendix A).
3. The court may require additional qualifications to address issues specific to the parties.
4. A qualified eldercare coordinator must be in good standing, or in clear and active status, with all of his or her respective professional licensing authority or certification board(s), as applicable.

Disqualifications of eldercare coordinator.—

The court may not appoint a person to serve as eldercare coordinator who, in any jurisdiction:

1. Does not meet the Level 2 background screening as defined in section 435.04(2) and (3), Florida Statutes, or meet the provisions of section 435.07.
2. Is or has been a respondent in a final order for injunction for protection against domestic, dating, sexual, or repeat violence or stalking.

An eldercaring coordinator must discontinue service and immediately report to the court if he or she no longer meets the minimal qualifications or if any of the disqualifying circumstances described above occur, and the court may appoint another eldercaring coordinator.

Definition of Eldercaring Coordination. Eldercaring coordination is a dispute resolution process during which an eldercaring coordinator assists elders, legally authorized decision-makers, and others who participate by court order or invitation to resolve disputes with high conflict levels in a manner that respects the elder's need for autonomy and safety by:

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

These Guidelines are aspirational in nature and offer guidance in best practices, qualifications, training and ethical obligations for eldercaring coordinators. Although they are not intended to create standards of liability, they do provide very specific and detailed recommendations for training and best practices because of the expressed need for guidelines for program development and training. It is understood that each circuit may vary in its practices; however, for eldercaring coordination to be accepted as a credible professional role, certain minimum guidelines of conduct and best practices must be articulated and followed.

ETHICAL GUIDELINES FOR ELDERCARE COORDINATORS

Eldercaring Coordination Concepts

Eldercaring coordination is an elder-centered process that respects and protects the self-determination of the elder to the extent possible, balanced with a need for safety of the elder. Autonomy and safety include the rights, needs, care, wishes, choices, preferences and intentions of the elder. It is based on the concepts of maintaining dignity, encouraging appropriate levels of independence, communication, education, negotiation, facilitation, and problem-solving.

The role of an eldercaring coordinator includes the integration of skills and core knowledge drawn primarily from the areas of humanistic gerontology, geriatric syndromes, social work, marriage and family therapy, mental health counseling, psychology, community-based health and social service support systems, law, and conflict resolution.

Eldercaring coordination focuses on reducing the level of conflict so that the family members and stakeholders are able to focus more productively on the issues at hand and work with others in their support system to provide legal advice, guidance and care. Eldercaring coordination is to complement, not replace, other services such as the provision of legal information or legal representation, individual/family therapy, medical treatment, psychological or psychiatric evaluation, mediation, and social and community based services.

Parties may choose to enter the eldercaring coordination process voluntarily or through an Agreed Order of Referral to Eldercaring Coordinator. The Court may also order parties to eldercaring coordination without their consent, if it determines that:

a) there is evidence of abuse, neglect or exploitation against the elder, or the elder's health, safety and well-being are in immediate jeopardy and the elder provides voluntary, informed consent to participate in the eldercaring coordination process; and

b) the parties have the financial ability to pay the eldercaring coordination fees and costs, or such services are available for an indigent party at no cost to that party.

A court order may require people to participate or allow others to participate voluntarily in the eldercaring coordination process. In addition to the elder, "legally authorized decision-makers" refers to those with authority to make decisions for the elder by statute or rule who may be included in the eldercaring coordination process in their respective decision-making roles. "Others who participate by court order or voluntarily" through invitation by a party with decision-making authority, or by the eldercaring coordinator, takes into account all potential stakeholders who may have insight and information of value to the elder, family, and other participants, but will not have decision-making authority unless designated such by the elder without coercion or undue influence. If challenged, the burden is on the person with authority to prove that such authority was delegated to them by the elder without coercion or undue influence.

Competence

(a) Professional Competence. Eldercaring coordinators shall acquire and maintain professional competence in eldercaring coordination. An eldercaring coordinator shall regularly participate in educational activities promoting professional growth.

(b) Circumstances Affecting Role. Eldercaring coordinators shall withdraw from the eldercaring coordination role if circumstances arise which impair the Eldercaring coordinator's competency.

(c) Skill and Experience. An eldercaring coordinator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the eldercaring coordinator's skill or experience, or if the eldercaring coordinator is aware of a pre-existing conflict or an inability to serve as a neutral.

(d) Knowledge. An eldercaring coordinator shall maintain knowledge of all current statutes, court rules, local court rules, and court and administrative orders relevant to the eldercaring coordination process. This must also include knowledge ascribed by the training objectives approved by the Florida Chapter of the Association of Family and Conciliation Courts.

e) Circumstances endangering family. It is possible that the eldercaring coordinator's role may be inappropriate and potentially exploited by perpetrators of domestic violence who have exhibited patterns of violence, threat, intimidation and coercive control over their elder family member. In those cases of domestic violence where one party seeks to obtain and maintain power and control over the other, the role of the eldercaring coordinator changes to an almost purely enforcement function. Dispute resolution techniques in such cases may have the effect of maintaining or increasing the imbalance of power and the victim's risk of harm. Eldercaring coordinators should routinely screen prospective cases for violence and abuse and decline to accept or withdraw from such cases if they do not have specialized expertise and procedures to effectively manage those cases involving an imbalance of power, control and coercion.

Integrity

(a) Avoiding Dual Relationships. An eldercaring coordinator shall not accept the role of eldercaring coordinator if there has been a prior personal, professional or business relationship with the parties or their family members. An eldercaring coordinator shall not enter into a personal, professional or business relationship with the parties or their family members during the eldercaring coordination process or for a reasonable time after the eldercaring coordination process has concluded.

(b) Respect for Diversity. Eldercaring coordinators shall not allow their personal values, morals, or religious beliefs to undermine or influence the eldercaring coordination process or their efforts to assist the parties and the elder. If the eldercaring coordinator has personal, moral, or religious beliefs that will interfere with the process or the eldercaring coordinator's respect for persons involved in the eldercaring coordination process, the eldercaring coordinator shall decline the appointment or withdraw from the process.

(c) Inappropriate Activity. Eldercaring coordinators shall not engage in any form of harassment or exploitation of elders, parties, students, trainees, supervisees, employees, or colleagues.

(d) Misrepresentation. An eldercaring coordinator shall not intentionally or knowingly misrepresent any material fact or circumstance in the course of conducting an eldercaring coordination process.

(e) Demeanor. An eldercaring coordinator shall be patient, dignified, and courteous during the eldercaring coordination process.

(f) Maintaining Integrity. An eldercaring coordinator shall not accept any engagement, provide any service, or perform any act that would compromise the eldercaring coordinator's integrity.

(g) Avoiding Coercion. An eldercaring coordinator shall not unfairly influence the parties as a means to achieve a desired result.

Committee Notes

Any sexual or romantic relationship between an eldercaring coordinator and a party or a party's family member or member of the caretaking team is a form of exploitation and creates a dual relationship and therefore would be considered a violation of these guidelines.

An eldercaring coordinator may at times direct a party's conduct. An example is when an eldercaring coordinator encourages compliance with an elder care plan by pointing out possible consequences of a party's course of action. However, the means to direct behavior should not include unfairly influencing the parties. Examples of unfairly influencing the parties include lying to the parties or exaggerating the eldercaring coordinator's power to influence the court.

Advice, Recommendations, and Information

(a) Informing Parties of Risks. Prior to an eldercaring coordinator making substantive recommendations to the parties regarding responsibilities, the eldercaring coordinator should inform the parties of the inherent risk of making substantive recommendations without adequate data.

(b) Right to Independent Counsel. When an eldercaring coordinator believes a party does not understand or appreciate the party's legal rights or obligations, the eldercaring coordinator shall advise the party of the right to seek independent legal counsel.

Impartiality

(a) Freedom from Favoritism and Bias. An eldercaring coordinator shall conduct the eldercaring coordination process in an impartial manner. Impartiality means freedom from favoritism or bias in word, action, and appearance.

(b) Disclosure. An eldercaring coordinator shall advise all parties of circumstances which may impact impartiality including, but not limited to, potential conflicts of interest bearing on possible bias, prejudice, or impartiality.

(c) Influence. An eldercaring coordinator shall not be influenced by outside pressure, bias, fear of criticism, or self-interest.

(d) Gifts. An eldercaring coordinator shall not give, accept or request a gift, favor, loan, or other item of value to or from a party, attorney, or any other person involved in and arising from any eldercaring coordination process.

(e) Prohibited Relationships. After accepting appointment, and for a reasonable period of time after the eldercaring coordination process has concluded, an eldercaring coordinator shall avoid entering into family, business, or personal relationships with the elder, participating family member, or any party participating in the eldercaring coordination process in a decision-making role which could affect impartiality or give the appearance of partiality, bias, or influence.

(f) Withdrawal. An eldercaring coordinator shall withdraw from an eldercaring coordination process if the eldercaring coordinator can no longer be impartial.

Conflicts of Interest

(a) Generally. An eldercaring coordinator shall not serve as an eldercaring coordinator in a matter that presents a clear or undisclosed conflict of interest. A conflict of interest arises when any relationship between the eldercaring coordinator and the eldercaring coordination participants or the subject matter of the dispute compromises or appears to compromise the

eldercaring coordinator's impartiality.

(b) Disclosure. The burden of disclosure rests on the eldercaring coordinator. All such disclosures shall be made as soon as practical after the eldercaring coordinator becomes aware of the interest or relationship giving rise to the conflict of interest. After appropriate disclosure, the eldercaring coordinator may serve if all parties express agreement in writing. However, if a conflict of interest clearly impairs an eldercaring coordinator's impartiality, the eldercaring coordinator shall withdraw regardless of the express agreement of the parties.

(c) Solicitation Prohibited. An eldercaring coordinator shall not use the eldercaring coordination process to solicit, encourage, or otherwise incur future professional services with any party.

Committee Notes

The eldercaring coordination process may take place over a long period of time. Therefore, the eldercaring coordinator may initially accept an appointment where a potential conflict does not exist, but arises during the course of the eldercaring coordination process.

During the eldercaring coordination process, the eldercaring coordinator shall not serve in any other capacity for the elder, family members and any decision-maker participating in the process. It is imperative that the eldercaring coordinator never accept appointment or otherwise become therapist, evaluator, lawyer, coach, consultant or any other role after accepting appointment as eldercaring coordinator due to the potential for a conflict of interest.

The disclosure requirements in this section do not abrogate the prohibition of an eldercaring coordinator from accepting the role of eldercaring coordinator if there has been a prior personal, professional or business relationship with the parties', their family members, or anyone with a decision-making role for the elder. It is intended to address situations in which the conflict arises after the acceptance of appointment and encourage the timely disclosure to the parties.

Scheduling the Eldercaring Coordination Process

An eldercaring coordinator shall schedule eldercaring coordination sessions in a manner that provides adequate time for the process. An eldercaring coordinator shall perform eldercaring coordination services in a timely fashion, avoiding delays whenever possible. It is the responsibility of the eldercaring coordinator to schedule sessions in a location that allows for the participation of the elder, whenever feasibly possible, and all decision-making parties.

The eldercaring coordinator and/or parties with decision-making authority have the responsibility to determine who would be appropriate to include in the eldercaring coordination process and may change the list of invited participants over time. Should there not be an agreement on who to include in the process, the eldercaring coordinator may recommend and, if needed, make the decision to invite someone if the eldercaring coordinator believes that the additional participant will be helpful to the process of resolving the conflict.

Compliance with Authority

An eldercaring coordinator shall comply with all statutes, court rules, local court rules, and court and administrative orders relevant to the eldercaring coordination process.

Improper Influence

An eldercaring coordinator shall refrain from any activity that has the appearance of improperly influencing a court to secure an appointment to a case.

Marketing Practices

(a) False or Misleading Marketing Practices. An eldercaring coordinator shall not engage in any marketing practice, including advertising, which contains false or misleading information. An eldercaring coordinator shall ensure that any marketing of the eldercaring coordinator's qualifications, services to be rendered, or the eldercaring coordination process is accurate and honest.

(b) Qualification. Any marketing practice in which an eldercaring coordinator indicates that such ElderCaring Coordinator is "qualified" is misleading until such time as the state or circuit(s) create their own qualifications or endorse the qualifications recommended in the FLAFCC Guidelines for ElderCaring Coordinators.

(c) Prior Adjudicative Experience. Any marketing practice is misleading if the eldercaring coordinator states or implies that prior adjudicative experience, including, but not limited to, service as a judge, magistrate, or administrative hearing officer, makes one a better or more qualified eldercaring coordinator.

(d) Prohibited Claims or Promises. An eldercaring coordinator shall not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(e) Additional Prohibited Marketing Practices. An eldercaring coordinator shall not engage in any marketing practice that diminishes the importance of a party's right to self-determination or the impartiality of the eldercaring coordinator, or that demeans the dignity of the eldercaring coordination process or the judicial system.

Committee Note

The roles of an eldercaring coordinator and an adjudicator are fundamentally distinct. The integrity of the judicial system may be impugned when the prestige of the judicial office is used for commercial purposes. When engaging in any eldercaring coordinator marketing practice, a former adjudicative officer should not lend the prestige of the judicial office to advance private interests in a manner inconsistent with this rule. For example, the depiction of an eldercaring coordinator in judicial robes or use of the word "judge" with or without modifiers to the eldercaring coordinator's name would be inappropriate. However, an accurate representation of the eldercaring coordinator's judicial experience would not be inappropriate.

Concurrent Standards

Other ethical standards to which an eldercaring coordinator may be professionally bound are not abrogated by these rules. In the course of performing eldercaring coordination services, however, these rules prevail over any conflicting ethical standards to which an eldercaring coordinator may otherwise be bound.

Relationship with Other Professionals

An eldercaring coordinator shall respect the role of other professional disciplines in the eldercaring coordination process and shall promote cooperation between eldercaring coordinators and other professionals.

Confidentiality

All communications made among the parties or between any party and the eldercaring coordinator during the eldercaring coordination process cannot be kept confidential from any other parties involved in the eldercaring coordination process.

(a) Preservation of Confidentiality. An eldercaring coordinator shall maintain confidentiality of all communications made by, between, or among the parties and the eldercaring coordinator, and will not disclose communications to any person not participating in the eldercaring coordination process, except when disclosure is required or permitted by law or court order. The eldercaring coordinator shall maintain confidentiality of all records developed or obtained during the eldercaring coordination process in accordance with law or court order, such as the duty to report any suspected abuse, neglect or exploitation to the state Adult Protective Services office.

(b) Use of Materials for Educational Purposes. An eldercaring coordinator shall not disclose the identity of the parties, elders, family, or other persons involved in the eldercaring coordination process when information is used in teaching, writing, consulting, research, and public presentations.

(c) Record Keeping. An eldercaring coordinator shall maintain privacy in the storage and disposal of records and shall not disclose any identifying information when materials are used for research, training, or statistical compilations.

Notice and Initial Session

(a) Notice of Fees. Prior to an initial meeting with the parties in an eldercaring coordination session, the eldercaring coordinator shall provide written notice of all fees, costs, methods of payment and collection.

(b) Initial Session. During the initial session an eldercaring coordinator shall personally describe the terms of the Order of Referral, if any, and inform the participants in writing of the following:

(1) The eldercaring coordination process, the role of the eldercaring coordinator and the prohibition against dual roles;

(2) Eldercares coordination is a dispute resolution process wherein an eldercaring coordinator may assist the parties, elders, and/or family in creating or implementing an eldercare plan, if such plan is necessary to reach a resolution;

(3) The eldercaring coordinator may provide education and make recommendations to the parties, and, with prior approval of the court, make non-substantive decisions;

(4) Communications made during the eldercaring coordination session are confidential, except where disclosure is required or permitted by law or where there is an agreement between the parties regarding nonconfidentiality expressed in writing;

(5) All fees, costs, methods of payment, and collections related to the eldercaring coordination process;

(6) The court's role in overseeing the eldercaring coordination process, including a party's right to seek court intervention;

(7) The participants' right to seek legal advice; and

(8) The extent to which parties are required to participate in the eldercaring coordination process.

(9) The position of the eldercaring coordinator is one of considerable authority and power. It is important that all parties fully understand the extent of authority and power they are

assigning to the eldercaring coordinator in the form of decision-making, the limited nature of the confidentiality of the process, the professional persons with whom the eldercaring coordinator will be authorized to consult or obtain information, and what all of the participants' rights are in seeking redress with the court.

Fees and Costs

An eldercaring coordinator holds a position of trust. Fees shall be reasonable and be guided by the following general principles:

(a) The court shall determine the allocation of fees and costs for the eldercaring coordination process when it is court ordered.

(1) In determining if a non-indigent party has the financial ability to pay the eldercaring coordination fees and costs, the court shall consider the party's financial circumstances including income, assets, liabilities, financial obligations, resources, and whether paying the fees and costs would create a substantial hardship. The Court may include in its order the maximum fees and costs that each party is required to pay.

(2) If a party is found to be indigent based upon the factors in section 57.082, Florida Statutes, the court will only require eldercaring coordination if an eldercaring coordinator can work on a pro bono basis, or there are public funds available to pay the indigent party's allocated portion of the fees and costs, or a nonindigent party consents to paying the fees and costs for the indigent party.

(b) Equitable Service. Eldercaring coordinators shall provide the same quality of service to all parties regardless of the amount of each party's financial contribution.

(c) Basis for Charges. Fees for eldercaring coordination services based on time shall not exceed actual time spent or allocated.

(d) Changes in Fees, Costs, or Payments. Once services have begun, eldercaring coordinators shall provide advance written notice of any changes in fees or other charges.

(e) Costs. Charges for costs shall be for those actually incurred.

(f) Expenses. When time or expenses involve two or more eldercaring coordination processes for different clients on the same day or trip, the time and expense charges shall be prorated appropriately.

(g) Written Explanation of Charges. An eldercaring coordinator shall give the parties and their counsel a written explanation of any fees and costs prior to the eldercaring coordination process. The explanation shall include the:

(1) basis for and amount of any charges for services to be rendered, including minimum fees and travel time;

(2) amount charged for the postponement, rescheduling or cancellation of eldercaring coordination sessions and the circumstances under which such charges will be assessed or waived;

(3) basis and amount of charges for any other items; and

(4) parties' pro rata share of the eldercaring coordinator's fees and costs if previously determined by the court or agreed to by the parties.

(h) Maintenance of Financial Records. An eldercaring coordinator shall maintain records necessary to support charges for services and expenses and, upon request, shall make an accounting to the parties, their counsel, or the court.

(i) Remuneration for Referrals. An eldercaring coordinator may not accept a commission, rebate, similar remuneration, or any other personal gain for any referral made to other service providers. Similarly, an eldercaring coordinator may not give commissions, rebates, or similar remuneration for eldercaring coordinator referrals received from the court or other service providers.

(j) Contingency Fees Prohibited. An eldercaring coordinator shall not charge a contingent fee or base a fee on the outcome of the process.

Records

(a) Documentation of Eldercaring Coordination Process. Eldercaring coordinators shall maintain all information and documents related to the eldercaring coordination process.

(b) Record Retention. Eldercaring coordinators shall maintain confidentiality and comply with applicable law when storing and disposing of eldercaring coordination records.

(c) Relocation or Closing the Eldercaring Coordination Practice. An eldercaring coordinator shall provide public notice of intent to relocate or close his or her practice. The notification shall include instructions on how participants may obtain copies of their records or arrange for their records to be transferred.

Safety, Capacity, and Protection

(a) Monitoring. Eldercaring coordinators shall monitor the process on an on-going basis for abuse, neglect, domestic violence, deception, coercion, exploitation, extortion, fraud, robbery, stalking, kidnapping, substance abuse, or mental health issues and take appropriate action to address any safety concerns.

(b) Injunctions for Protection. Eldercaring coordinators shall honor the terms of all active injunctions for protection and shall not seek to modify the terms of an injunction.

(c) Terminating Process Based on Safety Concerns. Eldercaring coordinators shall suspend the process and notify the court when the eldercaring coordinator determines it is unsafe to continue. See section (c) under Competence for additional details.

(d) Adjournment or Termination. An eldercaring coordinator shall adjourn or terminate an eldercaring coordination process if safety becomes an issue that places participants or the eldercaring coordinator in jeopardy.

Education and Training

Eldercaring coordinators shall comply with any statutory, rule or court requirements relative to qualifications, training, and education, and shall strive to maintain and enhance their knowledge base and training relevant to this process.

Responsibility to the Courts

(a) **Candid with Referring Court.** An eldercaring coordinator shall be candid, accurate, and responsive to the court concerning his or her qualifications, availability and other administrative matters.

(b) **Providing Information to the Court.** When eldercaring coordinators provide information to the court, eldercaring coordinators shall do so in a manner that is consistent with court rules and statutes. Eldercaring coordinators shall notify the referring court when the court's order conflicts with the eldercaring coordinator's professional ethical responsibilities. Eldercaring coordinators shall notify the court when it is appropriate to terminate the process. An eldercaring coordinator shall be candid, accurate, and fully responsive to the court concerning the eldercaring coordinator's qualifications, availability, and other administrative matters.

Discipline

It is incumbent upon the eldercaring coordinator to explain the grievance process during the orientation to the eldercaring coordination process in advance of providing services. Any complaint regarding the conduct of a court appointed eldercaring coordinator may be filed with the presiding judge who may remove the eldercaring coordinator from the case, and upon a finding of good cause, may refer the complaint to any agency or regulatory body overseeing any professional license or certification held by the eldercaring coordinator.

PROSPECTIVE PROPOSED RULES FOR QUALIFIED AND COURT APPOINTED ELDERCARE COORDINATORS

Order Referring Parties to Eldercare Coordinator. The order shall specify the role, responsibility, and authority of the eldercare coordinator.

Appointment of Eldercare Coordinator. The parties may agree in writing on an eldercare coordinator subject to the court's approval. If the parties cannot agree on an eldercare coordinator the court shall appoint a qualified eldercare coordinator.

Response by Eldercare Coordinator. The eldercare coordinator shall file a response within 30 days of the date of the Order of Appointment to alert the court that he or she is accepting or declining the appointment.

Term of Service. The term of the eldercare coordinator shall be as specified in the order of appointment or as extended by the court. The initial term of service shall not exceed two years.

Removal of Eldercare Coordinator. The court shall remove the eldercare coordinator upon:

- (1) The eldercare coordinator's resignation or disqualification; or
- (2) A finding of good cause shown based on the court's own motion or a party's written motion. Good cause includes, but is not limited to any disqualifier of the eldercare coordinator; circumstances that compromise the safety of any person or the integrity of the process; or a finding that there is no longer a need for the service of the eldercare coordinator. The motion and notice of hearing shall also be timely served on the eldercare coordinator.

Appointment of Substitute Eldercare Coordinator. If an eldercare coordinator cannot serve or continue to serve, a substitute eldercare coordinator may be chosen in the same manner as the original.

Authority with Consent. The eldercare coordinator may have additional decision-making authority to assist the parties upon their express written consent. If there has been a history of elder abuse or domestic violence the court must find that consent has been freely and voluntarily given.

- (1) With the express written consent of the elder and other parties with decision-making authority, the eldercare coordinator may:
 - (a) have temporary decision-making authority to resolve specific non-substantive disputes between the parties until such time as a court order is entered modifying the decision; or
 - (b) make recommendations to the court for the purpose of resolving an issue regarding the elder's safety or care.
- (2) If there has been a history of elder abuse or exploitation, or domestic violence, the court must find that consent has been freely and voluntarily given.

Limitation of Authority.

- (1) An eldercare coordinator shall not have decision making authority to resolve substantive disputes between the parties. A dispute is substantive if it would:

- (a) change the determination of capacity or incapacity of the elder;
- (b) change the nature and scope of the existing authority of a Guardian/POA/HCS;
- (c) change the residence of the elder, or
- (d) delegate any rights of the elder to another person.

(2) An eldercaring coordinator shall not make a substantive recommendation to the court unless the court on its own motion or joint motion of the parties determines that:

- (a) there is an emergency affecting the safety of the elder;
- (b) the recommendation would be in the best interest of the elder; and
- (c) the parties agree that any eldercaring coordination communications that may be raised to support or challenge the recommendation of the eldercaring coordinator will be permitted.

Release for Information.

(1) With the voluntary, express written consent of the elder, or other parties who have decision-making authority to provide express written consent relating to the specific information sought or provided, the eldercaring coordinator may:

- (a) have access to confidential and privileged records and information regarding the elder;
or
- (b) provide confidential and privileged information regarding the elder to health care providers and to any other third parties agreed to by the elder or those with decision-making authority.

Emergency Order.

(1) **Consideration by the Court.** Upon the filing of an affidavit or verified report of an emergency by the eldercaring coordinator, the court shall expedite a determination of whether the facts and circumstances contained in the report constitute an emergency and whether an emergency order needs to be entered with or without notice to the parties to prevent or stop furtherance of the emergency. Except for the entry of an ex parte order in accordance with (2) below, the court shall set a hearing with notice to the parties to be held at the earliest possible time.

(2) **Ex Parte Order.** An emergency order may be entered without notice to the parties if it appears from the facts shown by the affidavit or verified report that there is an immediate and present danger that the emergency situation will occur before the parties can be heard. No evidence other than the affidavit or verified report shall be used to support the emergency being reported unless the parties appear at the hearing or have received notice of a hearing. Every temporary order entered without notice in accordance with this rule shall be endorsed with the date and hour of entry, be filed forthwith in the clerk's office, and define the injury or potential injury, state findings by the court why the injury or potential injury may be irreparable, and give the reasons why the order was granted without notice. The court shall provide the parties and attorney ad litem, if one is appointed, with a copy of the eldercaring coordinator's affidavit or

verified report giving rise to the ex parte order. A return hearing shall be scheduled if the court issues an emergency ex parte order.

(3) **Duration.** The emergency order shall remain in effect until further order.

(4) **Motion to Dissolve or Modify Ex Parte Order.** A motion to modify or dissolve an ex parte emergency order must be heard in a timely manner after the movant applies for a hearing.

Written Communication with Court. The eldercaring coordinator may submit a written report or other written communication regarding any nonconfidential matter to the court.

(1) Eldercaring coordinators may report emergencies to the court regarding the elder's safety without giving notice to the parties .

(2) If the eldercaring coordinator is unable to adequately perform the duties in accordance with the court's direction, the eldercaring coordinator shall file a written request for a status conference and the court shall set a timely status hearing.

(3) The eldercaring coordinator must contemporaneously serve each party with a copy of the written communication.

Testimony and Discovery. An eldercaring coordinator shall not be called to testify or be subject to the discovery rules of the Florida Law Rules of Procedure unless the court makes a prior finding of good cause. A party must file a motion, alleging good cause why the court should allow the eldercaring coordinator to testify or be subject to discovery. The requesting party shall serve the motion and notice of hearing on the eldercaring coordinator. The requesting party shall be responsible for the eldercaring coordinator's fees and costs incurred as a result of the motion.

Eldercaring Coordination Session. An eldercaring coordination session occurs when a party and the eldercaring coordinator communicate with one another. An eldercaring coordination session may occur in the presence or with the participation of persons in addition to a party and the eldercaring coordinator. Unless otherwise directed by the court, the eldercaring coordinator shall determine who may be present during each eldercaring coordination session, including without limitation, attorneys, parties and other persons.

Elder Care Plan. Parties are more likely to comply with an elder care plan which has been voluntarily and mutually self-determined by the parties without undue outside influence. Courts therefore should consider referring parties to elder mediation prior to eldercaring coordination when a plan of care has not been agreed to by the parties or adopted by the court. Courts are also encouraged to review what social, psychological and educational interventions may best assist the parties in a timely manner. In cases where parties are referred to an eldercaring coordinator to adopt or create an eldercaring plan, the court should consider whether the parties would be better served by the court determining certain aspects of the plan of care prior to referral to an eldercaring coordinator.

**REPRESENTATIVES OF ORGANIZATIONS COMPOSING
FLAFCC TASK FORCE ON ELDERCARE COORDINATION
(*Position When Representative Joined FLAFCC Task Force*)**

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Association of Family and Conciliation Courts and Florida Chapter

Hon. Michelle Morley, Co-Chair, Board of Directors
Florida Chapter of the Association of Family and Conciliation Courts

Jim Aiken, Executive Director
Florida Chapter of the National Association of Social Workers

Robert Anderson, Florida Statewide Program Director/
Nelson Mongiovi, MHP, Regional Program Director, Designee
Florida Department of Children and Families Adult Protective Services

Susan Rice Anderson, Deputy State Ombudsman for Legal Affairs
Florida State Ombudsman

Larry Barlow, Ph.D., LMFT, AAMFT, Approved Supervisor, Executive Director
Florida Association For Marriage and Family Therapists

Margaret Boeth, Program Director
Florida Attorney General's Office

Cathy Bowers, President, CP, MSA, NCG
National Patient Advocate, Inc.

Sean Cadigan, General Magistrate/Jennifer Branch, Court Counselor, Designee
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With our great appreciation to Kirsten K. Davis, J.D., Ph.D., Professor of Law and Director, Institute for the Advancement of Legal Communication, Stetson University College of Law.