

2020

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Recommended Citation

Kristen M. Blankley, *Online Resources and Family Cases: Access to Justice in Implementation of a Plan*, 88 Fordham L. Rev. 2121 ().

Available at: <https://ir.lawnet.fordham.edu/flr/vol88/iss6/2>

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ONLINE RESOURCES AND FAMILY CASES: ACCESS TO JUSTICE IN IMPLEMENTATION OF A PLAN

Kristen M. Blankley*

INTRODUCTION

What does “access to justice” mean? To date, most scholars and practitioners use the term “access to justice” to include ideas such as access to a court,¹ a lawyer,² a mediator or arbitrator,³ a settlement,⁴ or a court decision.⁵ Typical “access to justice” initiatives include suggestions surrounding drafting and filing documents,⁶ increasing legal aid and other pro bono initiatives (including limited scope representation),⁷ providing legal

* Professor of Law, University of Nebraska College of Law. This Article was prepared for the Symposium entitled *Achieving Access to Justice Through ADR: Fact or Fiction?*, hosted by the *Fordham Law Review*, Fordham Law School’s Conflict Resolution and ADR Program, and the National Center for Access to Justice on November 1, 2019, at Fordham University School of Law. Many thanks to Fordham University School of Law and the *Fordham Law Review* for inviting me to participate. Thank you to Ryan Sullivan for his thoughtful comments on a draft of this paper.

1. See, e.g., Russell Engler, *Access to Justice and the Role of the Private Practitioner*, 24 KAN. J.L. & PUB. POL’Y 554, 555–56 (2015) (discussing the unmet legal needs and access to legal services for the roughly 80 percent of litigants that are unrepresented).

2. See generally Laura K. Abel, *Evidence-Based Access to Justice*, 13 U. PA. J.L. & SOC. CHANGE 295 (2009) (describing litigation-based metrics that can be generated to gauge success of access to justice initiatives).

3. See, e.g., Jacqueline Nolan-Haley, *Does ADR’s “Access to Justice” Come at the Expense of Meaningful Consent?*, 33 OHIO ST. J. ON DISP. RESOL. 373, 379–82 (2018) (asking whether ADR is the “Third Wave of the Access to Justice Movement”).

4. See Gary Blasi, *Framing Access to Justice: Beyond Perceived Justice for Individuals*, 42 LOY. L.A. L. REV. 913, 931–32 (2009) (discussing access to justice through creative options).

5. See Anna Blackburne-Rigsby, *Ensuring Access to Justice for All: Addressing the “Justice Gap” Through Renewed Emphasis on Attorney Professionalism and Ethical Obligations in the Classroom and Beyond*, 27 GEO. J. LEGAL ETHICS 1187, 1199–1200 (2014) (noting that access to justice involves obtaining a remedy, not merely a process); Marc Galanter, *Access to Justice in a World of Expanding Social Capability*, 37 FORDHAM URB. L.J. 115, 115 (2010) (describing the traditional notion of access to justice as access to judicial institutions).

6. See generally Jona Goldschmidt, *In Defense of Ghostwriting*, 29 FORDHAM URB. L.J. 1145 (2002) (discussing issues involving ghostwriting extensively).

7. See, e.g., Richard Devlin, *Bend or Break: Enhancing the Responsibilities of Law Societies to Promote Access to Justice*, 38 MAN. L.J. 119, 125 (2015) (discussing alternative delivery options for legal services, including limited scope representation).

services through technological assistance,⁸ and increasing use of paraprofessionals to help people in need of legal assistance accomplish routine tasks,⁹ among other things. The American Bar Association (ABA) Commission on the Future of Legal Services issued a robust report in 2016 that provides a dozen overarching recommendations (most with subrecommendations), and all of its recommendations concern access to lawyers and courts.¹⁰

In most areas of the law, enforcement of a court order is merely an afterthought. In cases involving family law, ensuring the implementation of a parenting plan, a financial plan, or even an order setting forth the terms of a guardianship is the true embodiment of access to justice.¹¹ If the courts are presumed to deliver justice, in family cases, access to such justice is most salient in implementation. Although courts (and lawyers) are instrumental in the creation of necessary court orders, parents and caretakers are likely significantly more interested in seeing their children, receiving financial support, and making decisions for their loved ones than they are in the court order itself.

This Article discusses access to justice in the implementation of orders in family cases. Parenting, financial, and other types of family court orders may last up to eighteen or twenty-one years in the case of minor children¹² or longer in the case of protected adults. In the case of financial obligations, these orders set forth ongoing requirements to make monthly payments (such as child support, alimony, and medical expense reimbursements) and to maintain other financial obligations (such as maintaining health insurance, daycare expenses, and payment of costs for extracurricular activities). Most importantly, these court orders allocate parenting time, which may also be called child access or visitation, depending on the jurisdiction.

In some areas, technology is already being utilized to implement family court orders, particularly regarding financial obligations. Online payment

8. See Rebecca Kunkel, *Rationing Justice in the 21st Century: Technocracy and Technology in the Access to Justice Movement*, 18 U. MD. L.J. RACE RELIGION GENDER & CLASS 366, 380–86 (2018) (discussing the use of technology in the access to justice debate).

9. See generally Elizabeth Chambliss, *Law School Training for Licensed “Legal Technicians”?: Implications for the Consumer Market*, 65 S.C. L. REV. 579 (2014) (discussing the role of nonlawyer legal technicians and ideas for training).

10. AM. BAR ASS’N COMM’N ON THE FUTURE OF LEGAL SERVS., REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 6–7 (2016), <https://www.srln.org/system/files/attachments/2016%20ABA%20Future%20of%20Legal%20Services%20-Report-Web.pdf> [<https://perma.cc/3QW9-V4US>] [hereinafter FUTURE OF LEGAL SERVICES REPORT].

11. See Rebecca Aviel, *Family Law and the New Access to Justice*, 86 FORDHAM L. REV. 2279, 2290 (2018) (suggesting that additional research on case closure, pendency of cases, and other metrics regarding parties’ return to court would help us to understand whether access to justice programs are working in the area of family law); see also Richard Zorza, *Some First Thoughts on Court Simplification: The Key to Civil Access and Justice Transformation*, 61 DRAKE L. REV. 845, 862 (2013) (“[A] final decision on the merits will be worthless if the . . . party cannot obtain meaningful relief.”).

12. The age of majority in most states is eighteen; two states use nineteen as the age of majority. ALA. CODE § 26-1-1 (2020) (setting the age of majority at nineteen); NEB. REV. STAT. § 43-2101 (2020) (same). In Mississippi, the age of majority is twenty-one. MISS. CODE ANN. § 1-3-27 (2020) (setting the age of majority at twenty-one).

systems, run through the appropriate state agencies, collect, track, and disburse child support and other financial payments. Telephone, video, and mobile programs (such as FaceTime or WhatsApp) may facilitate parenting time, particularly when parents live at a great distance from each other.¹³

Technological advances make the implementation of parenting plans and financial plans more accessible than ever. The marketplace for phone-based parenting apps, in particular, has flourished in recent years.¹⁴ Co-parenting apps allow parents to keep all of their messages together on a secure platform and create a central bank of information, such as medical and financial information.¹⁵ Online software programs also make conflict resolution between parents or other family members more accessible in the event that a plan is either not being followed or requires modification.¹⁶ Software programs can use real or artificial intelligence mediators to modify parenting and financial plans when the parties need assistance from outside sources.¹⁷

This Article proceeds in two parts. Part I sets forth the need for online resources to obtain true access to justice for families following the implementation of a plan, focusing on financial needs and physical access needs, as well as convenience and privacy. Part II discusses current online resources available to help parents implement, maintain, and modify parenting and financial plans. This Article discusses the benefits and pitfalls associated with the different types of technologies. Although none of the technologies are perfect, this Article highlights available resources and the circumstances under which those resources might facilitate the realization of family court orders.

I. THE NEED FOR ONLINE RESOURCES IN FAMILY CASES

The need for online resources to achieve access to justice in family cases is similar to the need for online resources in many other types of cases. Given the length of commitments embodied in these court orders, the need may be greater compared to other parts of a court's civil docket. This Part considers how financial and distance needs, as well as safety concerns in cases involving power and control, all support the use of online resources in family cases. Online resources can be particularly helpful in situations in which "it would be impossible or inadvisable to meet in person."¹⁸

13. See generally, e.g., Christine S. Glenn & Denise Hallmark, *When You Can't Be There in Person: Virtual Visitation Can Open a Door into Your Child's World*, FAM. ADVOC., Summer 2015, at 18 (describing multiple methods of increasing parenting time when parents live far apart).

14. See *supra* Part II.

15. See *supra* Part II.

16. See *supra* Part II.

17. See *supra* Part II.

18. Melissa H. Conley Tyler & Mark W. McPherson, *Online Dispute Resolution and Family Disputes*, 12 J. FAM. STUD. 165, 168 (2006).

A. Financial Needs

Financial need is a primary concern in the access to justice literature. The ABA's first recommendation in its Commission on the Future of Legal Services report reads: "[t]he legal profession should support the goal of providing some form of effective assistance for essential civil legal needs to all persons *otherwise unable to afford a lawyer*."¹⁹ The report stated, in no uncertain terms, that the need for legal services for "individuals living at or below the poverty level is vast and cannot be overstated."²⁰ Family law cases have the highest numbers of pro se participants, usually because of financial need.²¹

The financial need for families in conflict does not end at the termination of the court proceedings. Family cases involving high conflict often return to court, either on a contempt motion for failure to follow the plan or on a motion to modify the plan because it is not meeting the parties' needs.²² These additional legal proceedings continue to strain the financial resources of those in poverty and in the middle class.

Even in cases in which the family members are agreeable, financial needs may still arise to implement a parenting and financial plan in the best interests of the children and parties. Relocation, unemployment or new employment, remarriage, unforeseen health issues, birth of new children, and other major life events can render a parenting agreement made at a particular point in time unworkable under new circumstances. In some instances, parents need additional legal assistance interpreting their obligations when the plan does not properly anticipate the future needs of the parents. In other instances, changes in the law may affect plans that had been proceeding smoothly, such as changes to the tax code that went into effect in 2018 that repealed dependent exemptions and changed the taxable nature of alimony.²³ Legal changes in other areas, such as insurance, benefits, and public assistance, have the potential to create complications, confusion, and conflict in existing parenting and financial relationships.

19. FUTURE OF LEGAL SERVICES REPORT, *supra* note 10, at 6 (emphasis added). In addition, the report found that "[m]ost people living in poverty, and the majority of moderate-income individuals, do not receive the legal help they need." *Id.* at 11.

20. *Id.*

21. See Jessica Dixon Weaver, *Overstepping Ethical Boundaries?: Limitations on State Efforts to Provide Access to Justice in Family Courts*, 82 FORDHAM L. REV. 2705, 2708–09 (2014) ("In family court, parties appear pro se in a variety of cases, including divorce, paternity, child support, legal separation, and nullity cases.").

22. See, e.g., Sophie M. Mashburn, "Throwing the Baby Out with the Bathwater": Parenting Coordination and Pennsylvania's Decision to Eliminate Its Use, 2015 J. DISP. RESOL. 191, 194 ("Parenting coordination made its debut in family law ADR in the early 1990s in response to high-conflict families that often appeared in courtrooms and consumed court resources at disproportionate rates."); see also Tonya Inman et al., *High-Conflict Divorce: Legal and Psychological Challenges*, HOUS. LAW., Mar./Apr. 2008, at 24, 25 ("High-conflict divorces often occupy a disproportionate amount of time for family attorneys compared with other cases and create an excessive drain on the resources of the court.").

23. See Stephen J. Pieklik et al., *Deducting Success: Congressional Policy Goals and the Tax Cuts and Job Act of 2017*, 16 PITT. TAX REV. 1, 13 (2018) (discussing how the changes to the tax code affect families).

Online resources may help bring parents together to share information and resolve disputes at a reasonable cost. Parental communication apps and online calendars, discussed in more detail below in Part III, can provide a platform for file, photo, and information sharing, as well as innovative ways to structure online space to meet parties' needs.

B. Distance Needs

Bridging the gap of the physical distances between parties is often touted as a primary benefit of online dispute resolution (ODR).²⁴ For example, ODR shows great promise in the online consumer area for disputes, including those between individuals in the United States who purchase defective clothing products directly from overseas sellers through a website such as eBay or Amazon.²⁵ Without ODR for, and reputational scoring of, buyers and sellers, problems in one-off consumer transactions might go totally unnoticed.²⁶

In the area of family law, great distances can complicate not only the creation but also the implementation of family court orders, particularly regarding parenting time, visitation, or access. A distance of even a few hours apart can cause tremendous inconvenience for both parents and children as the plan goes forward. Travel by car similarly can pose significant burdens for the parents and children. Travel by air or train may be prohibitively expensive and lead to safety concerns if the minors travel unaccompanied. Parenting arrangements in which children spend long periods of time with a noncustodial parent, such as over the summer, may be less desirable to children as they grow older and do not want to leave their social groups for extended parenting time.

The use of online resources can help bridge the distance,²⁷ particularly through their capacity to provide noncustodial parents child access when face-to-face visits would be too difficult. Telephone and video communication may be important aspects of fulfilling access needs for parents. ODR, through traditional or even virtual third parties, may also ease concerns created when parents live at a distance or are otherwise in a remote place.

C. Power and Control Issues and Unresolved Parental Conflict

No discussion of dispute resolution in the family context is complete without a discussion of power and control or domestic abuse. Many

24. See, e.g., J. J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993, 2015 (2017) (noting that online systems can provide access for people in rural areas and when the parties are a great distance apart).

25. See Amy J. Schmitz, *There's an "App" for That: Developing Online Dispute Resolution to Empower Economic Development*, 32 NOTRE DAME J.L. ETHICS & PUB. POL'Y 1, 2-3 (2018) (discussing the need for and rise of ODR in consumer markets).

26. *Id.*

27. Tyler & McPherson, *supra* note 18, at 170 ("ODR makes it possible to provide family law mediation services to parties who are geographically remote.").

jurisdictions screen cases for instances where one parent asserts power and control over the other parent, particularly before parties mediate.²⁸ In some jurisdictions, cases that screen positive may trigger mandatory litigation, while in other jurisdictions, courts may modify alternative dispute resolution procedures to allow those couples to gain the advantages of informal processes while also protecting the vulnerable party.²⁹ Online resources may be particularly useful for protecting victims as the couple moves through the family law process and begins implementing its parenting and financial plans.³⁰

In some families, the parents do not experience domestic violence per se but have a high level of unresolved parental conflict.³¹ Cases of unresolved parental conflict may involve a significant amount of “button pushing,” mutual yelling and name calling, belittling, forcing children to take sides, and similar conduct.³² Mental health and substance abuse issues may also impact the parents’ ability to communicate in a productive manner.

Of course, once the plan is in place, the parties must implement it themselves. Online resources may have a particular value for ongoing communication issues in high-conflict families. Unresolved parental conflict is extraordinarily harmful to children, and online tools hold the promise to lessen it.³³ Text-based communication has the promise to be less emotional and better reasoned. In addition, such text-based communication can provide a written account that is preserved in the event of future disputes. As will be discussed below in Part III, however, text-based systems create other difficulties with high-conflict parents, and parties in particularly high-conflict relationships sometimes manage to create conflict no matter how they choose to interact (or not).

II. ONLINE RESOURCES FOR IMPLEMENTING AND CHANGING PARENTING ORDERS

This Part considers current technologies available to parents for implementing their parenting and financial plans. Part II.A discusses online

28. See Peter Salem & Michael Saini, *A Survey of Beliefs and Priorities About Access to Justice of Family Law: The Search for a Multidisciplinary Perspective*, 17 CARDOZO J. CONFLICT RESOL. 661, 670–71, 674–75 (2016) (discussing the results of a survey showing the necessity of screening as a component of access to justice and whether mediation should be available in high-conflict cases).

29. *Id.* at 672–75.

30. Tyler & McPherson, *supra* note 18, at 170 (“Where violence or abuse has been a factor, but parties nonetheless wish to negotiate rather than litigate, ODR offers an opportunity to do this without the need for face to face meetings.”).

31. Michele N. Struffolino, *Taking Limited Representation to the Limits: The Efficacy of Using Unbundled Legal Services in Domestic-Relations Matters Involving Litigation*, 2 ST. MARY’S J.L. MALPRACTICE & ETHICS 166, 181 (2012) (noting that the concept of “high conflict” is difficult to define with any precision).

32. DEBORA BROWNYARD ET AL., NEB. OFFICE OF DISPUTE RESOLUTION, FAMILY MEDIATION MANUAL 102–03 (rev. ed. 2019) (describing characteristics of mild to moderate parental conflict).

33. Tyler & McPherson, *supra* note 18, at 170 (citing research showing that online communication tools may reduce parental conflict).

tools for communication and online tools for parental visitation. These types of resources aid the parties in implementing a plan on which they presumably agree. Part II.B discusses dispute resolution for existing plans, notably online mediation for interpreting or modifying a plan, as well as online custody evaluation, which is a quasi-arbitral process used to decide conflicting ideas over what the terms of the plan require.

This Article recognizes that the circumstances of each family are different and some resources are better than others in particularized situations.³⁴ Online resources are often text-based, and their usefulness in cases involving high amounts of unresolved parental conflict and intimate-partner violence depends on the level of trust between the parties and their willingness to assume good intentions behind the meaning of the words. Text-based communications, particularly short text-based communications, may also be difficult for individuals with autism spectrum disorders or similar disorders that make understanding social cues and context difficult.³⁵

A. Tools for Day-to-Day Implementation of Parenting Plans

Most parents want to create and fulfill their parenting and financial obligations following a divorce or separation (or creation or change of a guardianship).³⁶ This section considers two ways online resources can accomplish this primary goal: (1) the use of parental communication apps and (2) the use of video and conferencing services.

1. Parental Communication Apps

Parental communication apps are web- or phone-based programs designed to help people co-parent from two homes. Effective communication between

34. Canadian Professor Michael Saini has long proposed a triage system for family cases based on the level of conflict and amount of assistance a family needs as it transitions. *See, e.g.,* Michael Saini, *Triage in Family Law: Presentation to the National Centre for State Courts*, PREZI (June 1, 2014), <https://prezi.com/3ujqwzoheap6/saini-2014-triage-in-family-law-presentation-to-the-national-centre-for-state-courts> [https://perma.cc/9UZC-K7VQ]. Some cases require little or no assistance from attorneys or even courts (other than to turn a plan into an enforceable order); other cases require significant interventions by courts and the legal process. *See id.* Many families need some assistance, but small nudges from mediators, other professionals, or even technology can help those families move in the right direction. *See id.*

35. *See, e.g.,* Beverly Vicker, *Social Communication and Language Characteristics Associated with High Functioning, Verbal Children and Adults with ASD*, IND. U. BLOOMINGTON RESOURCE CTR. FOR AUTISM, <https://www.iidc.indiana.edu/pages/Social-Communication-and-Language-Characteristics-Associated-with-High-Functioning-Verbal-Children-and-Adults-with-ASD> [https://perma.cc/V95R-AXAS] (last visited Apr. 12, 2020) (discussing language characteristics and social communication issues that may arise generally for people with autism spectrum disorders).

36. Most cases involving parenting time are routine and do not involve high conflict requiring a trial. Michael Saini et al., *Understanding Pathways to Family Dispute Resolution and Justice Reform: Ontario Court File Analysis & Survey of Professionals*, 54 FAM. CT. REV. 382, 389 (2016) (noting that less than 2 percent of surveyed cases involved a trial). Given the relatively small number of high-conflict family cases, most parents appear interested in fulfilling their parenting responsibilities.

parents is essential, both for modeling productive communication styles and for reducing trauma for the children.³⁷ In recent years, software designers created a wide variety of apps to help individuals co-parent, and a number of similarities exist across such apps. The apps tend to focus on and market to parents who seek particular types of assistance—from parents looking for a simple place to store all information relating to the children to parents looking to preserving information for later use in court proceedings. Most of these programs are relatively low-cost (under \$15.00 per month, roughly the same price as an online streaming subscription), which is a primary concern for access to justice.³⁸ This section gives an overview of the leading software in the industry and concludes with thoughts on their effectiveness in providing access to justice.

a. coParenter

coParenter markets itself as the “#1 co Parenting app”³⁹ and promises to help parents: “Save money. Stay out of court. Make better decisions for your kids.”⁴⁰ coParenter offers an impressive suite of services to help parents manage their communications and expenses for a relatively modest fee.⁴¹ coParenter offers parents a thirty-day free trial, after which the parents can pay on either a monthly (\$12.99 per month) or yearly basis (\$119.99 per year per parent or \$199.99 for both parents).⁴² coParenter offers a military discount and a fee waiver for indigent parents with a court order.⁴³

As with most other parental communication apps, coParenter provides parents with the ability to send each other secure (i.e., noneditable) messages with date and time stamps.⁴⁴ For parents in conflict, secure messaging is important to demonstrate that communications are authentic if a dispute later arises.⁴⁵ Parents can organize messages into folders and search for messages by keyword or date.⁴⁶ In addition, parents can export transcripts of their messages and share them with third parties, such as legal or health

37. See, e.g., Kathleen A. Hogan, *Parenting Time—in Words & Deed*, FAM. ADVOC., Summer 2015, at 2, 2 (“Children are usually best served by having two parents who communicate effectively, regardless of their marital status.”); Jeffrey Zimmerman & Lauren Behrman, *Parental Communication: How to Talk with One Another*, FAM. ADVOC., Summer 2015, at 4 (discussing five skill sets regarding parental communication and giving advice on how to use them all to productively co-parent).

38. See *infra* Part II.A.1.e.

39. See COPARENTER, <http://www.coparenter.com> [<https://perma.cc/53CV-D2WW>] (last visited Apr. 12, 2020).

40. *Id.*

41. See *Shop*, COPARENTER, <https://coparenter.com/shop/> [<https://perma.cc/X7KP-V5VL>] (last visited Apr. 12, 2020) (laying out the pricing structure).

42. See *id.*

43. See *id.*

44. See *Features: Organize & Connect*, COPARENTER, <https://coparenter.com/features/organize-and-connect/> [<https://perma.cc/2W3C-SDSF>] (last visited Apr. 12, 2020) (discussing its features).

45. See *Features: Records & Evidence*, COPARENTER, <https://coparenter.com/features/records-and-evidence/> [<https://perma.cc/EJ4K-CE7G>] (last visited Apr. 12, 2020).

46. See *Features: Organize & Connect*, *supra* note 44.

professionals.⁴⁷ Documents can also be exported for use in legal proceedings.⁴⁸ The ability to download text messages into a document alleviates the need to use screenshots from the parents' phones in court.

coParenter has a number of functions for centralizing and sharing information. Parents may grant access of their coParenter accounts to third parties, such as babysitters, grandparents, and health professionals.⁴⁹ As with most parental communication apps, coParenter allows the parties to share a calendar that can be populated not only with the parenting time obligation, but also with the children's extracurricular activities, social plans, and medical appointments, to name a few.⁵⁰ A future version of coParenter hopes to integrate its calendar with a parent's primary calendaring service, such as Outlook or Google Calendar.⁵¹

Further, coParenter has a feature that allows a parent to "check in" for child exchanges using the location of the parent's phone.⁵² If only one party uses coParenter, that parent can still check in for exchanges for the purpose of creating a record of following through with the parenting plan.⁵³ The app also provides parents with the opportunity to store all of the children's information, such as health, insurance, school, and emergency contact information, in its "information bank," which is shared by both parties.⁵⁴ On the financial side, coParenter allows parties to create expense requests and pay each other outstanding shared expenses.⁵⁵

In the area of conflict resolution, coParenter created a system that allows parents to make formal requests to change parenting plans on a onetime or more regular basis.⁵⁶ For example, a parent could propose swapping the coming weekend for the next, and the other parent could respond through the app.⁵⁷ Although the parents cannot use coParenter to change the parenting plan permanently and officially (only a court could change its order), the app allows parents to make modifications when they agree and without the

47. *See id.*

48. *See Features: Records & Evidence, supra* note 45 (outlining the use of records for legal and other purposes).

49. *See Features: Organize & Connect, supra* note 44.

50. *See Features: Plan & Agree, COPARENTER*, <https://coparenter.com/features/plan-and-agree/> [<https://perma.cc/439H-NXDM>] (last visited Apr. 12, 2020).

51. *Features: Organize & Connect, supra* note 44 ("(Coming Soon) Most people only like to use one calendar. So, coParenter syncs directly with the calendar you already use. That way, you can see your work, personal and coParenting responsibilities, all in one place.").

52. *Id.*

53. *Id.*

54. *Id.*

55. *See* coParenter, *coParenter Feature: Expense Payment & Tracking*, YOUTUBE (Jan. 18, 2019), <https://www.youtube.com/watch?v=vUtr9Xk1IEg&feature=youtu.be> [<https://perma.cc/F8XP-WWGU>] (providing more information on the features of coParenter's financial capacities).

56. *See Features: Plan & Agree, supra* note 50.

57. *Id.* (coParenter advertises: "Easily propose, respond and memorialize coParenting agreements that keep everyone on the same page. From weekend swaps, after-school activities and holidays to summer schedules, lifestyle choices and more, you have a record of what you both agree to.").

assistance of the court.⁵⁸ For parents who need extra help, coParenter provides live coaching for parents, as well as mediation through live or artificial intelligence mediators.⁵⁹

coParenter offers one of the most complete packages for people who are co-parenting from separate homes. The app offers tools not only for communication and information-sharing but also for simple (nonpermanent) modifications and conflict resolution. This app is one of the few on the market that allows for financial payment from one parent to the other through the app, which has the added benefit of creating a record of payment stored in the same place as other information regarding the children.

b. Talking Parents

While some apps, like coParenter, attempt to be an all-in-one experience for parents, other apps have a more limited scope. Talking Parents appears to be aimed at those parents who need a formal record of their communications because they have a high-level conflict between them and the documented communications might be necessary in a later court action. Talking Parents advertises, “Talking Parents is a free and fully secure co-parenting communication tool. We help co-parents communicate and avoid disputes by maintaining an unalterable record of all conversations, important dates, and shared files.”⁶⁰ The app offers a free web-based version of its program, but its mobile app version costs \$5.99 per month,⁶¹ making this program among the most affordable on the market.

The messaging features are the focal portions of this software. As with the other programs, the messages are secure and noneditable.⁶² The program can turn text messages into PDF documents and even certified records for use in

58. *Id.* Although parenting plans are entered as court orders, parents are free to modify them informally and without assistance of the court. Parenting plans often include language that allow parents to make nonpermanent changes to their plan based on parent agreement. *See, e.g., Parenting Plan Parent-Created (Joint Legal and Sole Physical Custody)*, ST. NEB. JUD. BRANCH ¶ 19, <https://supremecourt.nebraska.gov/sites/default/files/DC-6-5-38.pdf> [<https://perma.cc/Z3AW-W6VA>] (last visited Apr. 12, 2020). Informal modifications are commonplace. For example, parents may swap weekends if someone has an out-of-town trip. An exchange might occur early or late for a variety of reasons relating to the child’s or a parent’s schedule. In conducting my own mediations, I often tell parents that the parenting plan is simply a default for when they cannot get along.

59. *See* coParenter, *coParenter Feature: GetHelp*, YOUTUBE (Jan. 18, 2019), https://www.youtube.com/watch?v=8w2A0w_5-SY [<https://perma.cc/PFG2-UE9H>] (providing more information on the dispute resolution features of coParenter); *see also Features: Mediation/Coaching*, COPARENTER, <https://coparenter.com/features/mediation-coaching/> [<https://perma.cc/ZGD7-EGLE>] (last visited Apr. 12, 2020).

60. *See* TALKING PARENTS, <https://talkingparents.com/home> [<https://perma.cc/5BV9-GZE9>] (last visited Apr. 12, 2020).

61. *See* *Plans*, TALKING PARENTS, <https://talkingparents.com/how-it-works/pricing> [<https://perma.cc/R7ER-L3HW>] (last visited Apr. 12, 2020).

62. *See id.* In addition, the parties can receive email notifications of new messages from the co-parent. *See id.*

court, for an extra charge.⁶³ Talking Parents has a referral network of lawyers,⁶⁴ and it even provides sample orders for lawyers to include in their parenting plans and other court orders.⁶⁵ At this time, the Talking Parents software does not allow third parties to access the parents' accounts. Given the litigation focus of the app, adding third-party access for lawyers would be a logical expansion of the current software.

In addition to the messaging features, Talking Parents also has a shared calendar and the availability for parents to store files on the app.⁶⁶ These features seem secondary to Talking Parents's primary mission: to provide parents with accurate transcripts of their communications for later use in a court proceeding. Despite its limitations, the web-based version is free if the parents do not need certified records or PDF downloads.⁶⁷ Parents who expect to need to use communications in later court proceedings may want to opt for the \$5.99 version, which is roughly the cost of a premium coffee each month.⁶⁸

c. *OurFamilyWizard*

OurFamilyWizard (OFW) is not only a parenting communication app but also a family organization tool for any family, whether or not the parents are

63. See *How It Works*, TALKING PARENTS, <https://talkingparents.com/how-it-works> [<https://perma.cc/XYQ7-SZSU>] (last visited Apr. 12, 2020). For parents using the free version of the program, the PDF conversion of the records costs \$9.99 and certified records are available for \$39.99, in addition to \$0.19 per page. See *Plans*, *supra* note 61. Parents who have the \$5.99 plan have access to free PDF conversions but still have to pay for the certified records, but with a 10 percent discount. *Id.* It is unclear how valuable certified records are if noncertified but downloaded documents can also be admitted into evidence.

64. See *Find a Lawyer*, TALKING PARENTS, <https://talkingparents.com/lawyers/lawyer-directory> [<https://perma.cc/68M8-YBRL>] (last visited Apr. 12, 2020).

65. An example order is as follows:

The Court, finding that both parties have adequate access to the internet for said purposes, orders the following:

Due to ineffective, vitriolic, or otherwise poor communication between the parties, the Court orders both parties to go to www.TalkingParents.com and create an account within ___ days of this order.

Communication between the parties will be limited to matters regarding their child(ren) and will be made only through the Talking Parents service. Any communication or attempted communication by either party, or by a third party at either party's request, outside of Talking Parents will be contemptible and may result in sanctions including but not limited to incarceration.

The only exception to this condition would be in the event of a medical emergency regarding the child(ren) in which case either party may contact the other via other means to notify them of such an emergency. Any agreements reached regarding the child(ren) as a result of such emergency-related communication must be clarified, verified, and documented through Talking Parents in a timely manner.

Resources for Court Professionals, TALKING PARENTS, <https://talkingparents.com/for-professionals> [<https://perma.cc/F6RL-DUSA>] (last visited Apr. 12, 2020).

66. See *Plans*, *supra* note 61.

67. *Id.*

68. *Id.*

divorced.⁶⁹ OFW offers a wide array of tools for the family, similar to those offered by coParenter. The cost of OFW is also similar to that of coParenter. An account for one parent costs \$119.97 per year, which includes all of the features of the app, as well as five gigabytes of secure storage space.⁷⁰ Military discounts and fee waivers are also available.⁷¹ The software was developed for mobile devices, and parents can grant unlimited third-party access (to, for example, grandparents, stepparents, health-care professionals, lawyers, and even the children) to their account free of charge.⁷²

Most of the functionality of OFW is similar to that offered by coParenter. Both apps offer secure messaging, message boards for organizing messages, shared calendars, online journals and photo albums, and a shared information bank for all of the important family information, such as doctors' numbers, insurance information, and school schedules.⁷³ In addition, co-parents can suggest swaps of parenting time within the app.⁷⁴ OFW also allows parents to document expenses and track payments, including an option to use the app's own payment system to transfer funds from one parent's bank account to the other's.⁷⁵ The journal function allows parents to check in for exchanges by using the phone's location.⁷⁶ These functions are not necessarily unique to OFW, but they are useful features that can help co-parents and their extended networks communicate and share information about their children. Unlike coParenter, OFW does not offer conflict

69. Although OFW's primary market is those who parent from two homes, the app also markets to those whose large or extended families could benefit from the shared communication. *Families on OurFamilyWizard*, OURFAMILYWIZARD, <https://www.ourfamilywizard.com/families> [<https://perma.cc/4756-U4ND>] (last visited Apr. 12, 2020). Its website boasts: "Keeping the whole family in the loop: Parents, children, grandparents, and other family members can all use OurFamilyWizard as their central platform to connect and share their most important family information within one a [sic] secure space." *Id.*

70. See *Plans and Pricing*, OURFAMILYWIZARD, <https://www.ourfamilywizard.com/plans-and-pricing> [<https://perma.cc/Q6XN-98MK>] (last visited Apr. 12, 2020). OFW also provides à la carte pricing, but the bundle noted above appears to be a popular option. *Id.* OFW also offers a promotional period of thirty days to try the app risk free. *Id.*

71. *Id.*

72. For more information on third-party accounts in OFW, see *Family Account Types*, OURFAMILYWIZARD, <https://www.ourfamilywizard.com/family-account-types> [<https://perma.cc/P8SP-78UA>] (last visited Apr. 12, 2020).

73. For a more complete description of the features of the app, see *Product Features*, OURFAMILYWIZARD, <https://www.ourfamilywizard.com/product-features> [<https://perma.cc/SD57-TS6U>] (last visited Apr. 12, 2020).

74. *Id.*

75. Additional details on the expense log functionalities of the app can be found at *Expense Log*, OURFAMILYWIZARD, <https://www.ourfamilywizard.com/knowledge-center/tips-tricks/parents-website/expenses#payments> [<https://perma.cc/A9QW-QCQC>] (last visited Apr. 12, 2020). For more information on how the transactions occur through the app, as well as the applicable fees, see *OFWpay Setup*, OURFAMILYWIZARD, <https://www.ourfamilywizard.com/knowledge-center/tips-tricks/parents-website/ofwpay> [<https://perma.cc/C7Z4-CPRE>] (last visited Apr. 12, 2020).

76. *Journal*, OURFAMILYWIZARD, <https://www.ourfamilywizard.com/product-features/journal> [<https://perma.cc/8TRR-XC9P>] (last visited Apr. 12, 2020). The check-in function's location within the app's "journal" is not nearly as intuitive as the other functions of the app appear to be.

resolution services within its app, such as coaching or mediation (live or by artificial intelligence).

OFW further provides a unique feature called “ToneMeter.”⁷⁷ According to the website, “ToneMeter helps parents anticipate how the tone of their message, or note created with a Check-In or Moment, could be received by flagging statements that may be perceived as emotionally charged. This gives them the opportunity to modify the message before pressing send.”⁷⁸ Parents can tap an icon to have their messages (including “check-in” and “moment” messages) analyzed to determine whether the message could be misread or appear offensive.⁷⁹ ToneMeter is an interesting feature of OFW. On the one hand, parents who are well-meaning may use ToneMeter to revise messages to the co-parent after having a moment to think. On the other hand, because ToneMeter does not prevent messages with inflammatory language from going through, particularly vindictive parents may exploit ToneMeter to make their language more—rather than less—offensive.

d. Other Co-parenting Apps

The three co-parenting apps mentioned above are certainly not the only ones on the market, but these apps nicely display the variety of functionality that these programs provide. Parents have many apps from which to choose, and they likely receive recommendations from lawyers, friends, and internet research. Many of these apps appear to be trying to match the functionalities of the three detailed above, but each also needs to create its own niche to remain competitive in the marketplace.⁸⁰

Some parents only need a calendaring app to keep kids’ activities, appointments, vacations, and other important dates in one place. Google and Outlook calendars, for example, can be shared easily and without cost.⁸¹ Parents can also opt to use family calendaring apps to manage a single

77. *Analyze Your Tone with Tonemeter*, OURFAMILYWIZARD, <https://www.ourfamilywizard.com/knowledge-center/tips-tricks/parents-mobile/tonemeter> [<https://perma.cc/M9FH-T6B9>] (last visited Apr. 12, 2020).

78. *Id.*

79. *Id.*

80. Coparently, for instance, offers most of the suite of services offered by coParenter and OFW and for roughly the same price. *See* COPARENTLY, <http://coparently.com/> [<https://perma.cc/KRT3-MNYE>] (last visited Apr. 12, 2020). Coparently differs in that it is fully supported on both mobile app and web browser, whereas many of the other apps appear to be focused on one or the other. *Id.* 2houses, an app developed in Belgium, offers a similar suite of services. *See* 2HOUSES, <https://www.2houses.com/en> [<https://perma.cc/RMR2-5KA3>] (last visited Apr. 12, 2020).

81. For instructions on how to share a Google calendar, see *Add Someone Else’s Google Calendar*, GOOGLE, <https://support.google.com/calendar/answer/37100?co=GENIE.Platform%3DAndroid&hl=en> [<https://perma.cc/9KJ9-NF62>] (last visited Apr. 12, 2020). For instructions on how to share a Microsoft Exchange calendar, see *Share an Outlook Calendar with Other People*, MICROSOFT OFF., <https://support.office.com/en-us/article/share-an-outlook-calendar-with-other-people-353ed2c1-3ec5-449d-8c73-6931a0adab88> [<https://perma.cc/D9QN-MQUS>] (last visited Apr. 12, 2020).

calendar for two houses.⁸² These applications can provide organization and a way for both parents to add, subtract, modify, or otherwise change information relating to the children's schedules.

e. Benefits of Apps for Parents

Many parents can benefit from the functionalities offered by parental communication and other apps in ways that promote access to justice. These programs promise to help fulfill parenting and financial obligations between parents, which is crucial for implementing a multiyear co-parenting plan upon divorce or separation. Having all child-related information and messaging in a single place should theoretically ease access to information, particularly for noncustodial parents. For example, if a child is staying with one parent while the other is out of town on a work assignment and the child gets sick, the "on duty"⁸³ parent would know not only the names and phone numbers of the applicable doctors but also the insurance information.

Some of the parental communication apps allow parents to propose onetime swaps of parenting time, which gives parents flexibility in implementing their plan to best meet their schedules and the schedules of their children.⁸⁴ Parenting apps that allow for these types of little changes to the day-to-day implementation of a parenting plan can help foster communication and cooperation between parents. Parents can build trust with one another through small actions such as making agreements or even by simply adhering to the plan and communicating with one another in a manner that is civil. Access to justice, then, can be achieved through cooperation and implementation of the plan.

All of these communication apps provide for secure messaging, which is instrumental if one or both of the parents must file a contempt action against

82. Most family calendaring apps are marketed to a general audience, while most of the co-parenting apps are marketed primarily to divorced or separated couples. Some family calendaring apps, such as Cozi, are free, while others, such as WeParent, cost roughly \$10 per month for a family subscription. COZI, <https://www.cozi.com/feature-overview/> [<https://perma.cc/XK2N-SU7A>] (last visited Apr. 12, 2020); WEPARENT, <https://weparent.app/> [<https://perma.cc/MB7Z-52JH>] (last visited Apr. 12, 2020).

83. Over time, the language used for co-parents has evolved. The term "visitation" has largely gone out of favor because it implies that one parent only "visits" with the children, as opposed to "parents" the children. The concept of a parent being "on duty" simply implies that the children are with that particular parent at that time. For an example of a parenting plan that incorporates the concept of parents "on duty," see *Parenting Plan Agreement*, THIRD JUD. DISTRICT CT., <http://www.the3rdjudicialdistrict.com/ppagreement.htm> [<https://perma.cc/3HU7-FFVZ>] (last visited Apr. 12, 2020).

84. Although most parents assume that schedules are swapped for the benefit of the parents (such as work, travel, or other obligation), swaps can also be made if a child's activities fall disproportionately on the time of one parent or the other. For instance, if a child's track meet occurs every other weekend, one parent may bear a disproportionate burden of time related to the activity. An occasional swap may allow the child to have nontrack "quality time" with both parents more equally.

the other to enforce the plan.⁸⁵ Many parents communicate by text message, and parenting communication apps enhance traditional texting through security and time-stamping. Talking Parents, for instance, can provide parents with certified records to be introduced in court when the text messages are proof of the dispute between the two.⁸⁶ If the dispute revolves around missed exchanges, apps such as coParenter can use geolocation and check-ins to prove that a parent was available at a certain place and time for a child exchange.⁸⁷ In these situations, access to justice can be achieved by creating a record by which breaches of parenting plans can be verified in a later contempt action.

None of these applications are prohibitively expensive for middle-class families, and many of them are free.⁸⁸ The most costly of the apps is approximately \$10.00 per month, which is roughly the same price as many streaming entertainment subscriptions.⁸⁹ Other apps are available for free.⁹⁰ The cost of certified records on Talking Parents, at \$39.99 plus \$0.19 per page,⁹¹ is a rare function that may be cost prohibitive. On the whole, these applications provide relatively low-cost communication, monitoring, and dispute resolution.

f. Drawbacks of Apps for Parents

Of course, no technology is fail-safe, and parents may still find ways to circumvent the good intentions of the software. These apps might be misused, particularly by parents who have high levels of unresolved conflict and low levels of trust. High-conflict parents often fight about anything and everything, and reducing those parents to text-based communication may prolong conflict or create new conflict out of something that might have been cleared up over a simple phone call.

Most communication is interpreted from nonverbal cues. The “7%-38%-55% Rule” suggests that people rely on words for 7 percent of a message’s meaning, while relying on nonverbal communication for roughly 55 percent of a message’s meaning and relying on the vocal qualities of the speaker (tone, pace, pitch, etc.) for the remaining 38 percent.⁹² Parental communication apps largely reduce communication to text, which can be easily misinterpreted. Parties in conflict easily assume the worst of each

85. Because parenting and financial plans are court orders, they can be enforced through a motion for contempt. Some jurisdictions created an expedited process for these motions given their time-sensitive nature. *See, e.g.*, OR. REV. STAT. § 107.434 (2020).

86. *See supra* note 63 and accompanying text.

87. *See supra* notes 52–53 and accompanying text.

88. *See supra* notes 42, 61, 67, 70 and accompanying text.

89. *See supra* notes 42, 70 and accompanying text.

90. *See supra* note 67 and accompanying text.

91. *See Plans, supra* note 61.

92. *See generally* ALBERT MEHRABIAN, SILENT MESSAGES (1971).

other and ascribe the other's intent in a way that may or may not be accurate.⁹³

Lawyers, judges, and parties may be tempted to require parents with significant unresolved parental conflict to communicate solely through a parenting communication app. On the one hand, text-based communications are physically safe, which might be a primary concern when parents have a history of intimate partner abuse. On the other hand, high-conflict parents can still engage in verbal, emotional, or psychological abuse through text message, sometimes in stealthy ways that might not be obvious to an outside professional. OFW attempts to deal with high-conflict communication through the use of its ToneMeter functionality, but that part of the app is voluntary and potentially subject to manipulation.

On the whole, parenting communication apps provide valuable tools for parents who can work together. When parents are embroiled in conflict, text-based communication can be misinterpreted, misconstrued, or even manipulated in a way that makes these apps ill-suited for the family.

2. Online Parenting Time and Supervision

Online video and calling tools may help access to justice issues, particularly if the parents live a long distance from one another. For parents who live a few hours or more apart, one parent likely has significantly more time with the minor children than the other parent so that the children can go to the same school for the whole academic year. Although weekend visits (particularly over holidays and school breaks) may be possible for some families who live up to a few hours apart, other parents have significantly less time with their children simply because they live many miles, or even states, away. For parents living at a distance, "virtual parenting time" can give children increased contact with the noncustodial parent.⁹⁴

Virtual parenting time can increase opportunities for noncustodial parents to "share regular day-to-day conversations with their children."⁹⁵ Similarly, the use of online, particularly video, technology can give children and parents time to engage in the "mundane" conversations of everyday life to maintain and enhance their relationship.⁹⁶ But, online communication has drawbacks, such as difficulty in using the technology (including technical glitches),

93. MEDIATION: A PRACTICE GUIDE FOR MEDIATORS, LAWYERS, AND OTHER PROFESSIONALS § 7.3.3 (David A. Hoffman ed., 2013) (discussing the "negativity bias" and how it plays out with people in conflict).

94. Michael Saini & Shely Polak, *The Benefits, Drawbacks, and Safety Considerations in Digital Parent-Child Relationships: An Exploratory Survey of the Views of Legal and Mental Health Professionals in Family Law*, 56 FAM. CT. REV. 597, 598 (2018) (discussing a literature review regarding online or virtual parenting time).

95. *Id.* at 599, 601–02 (discussing the benefits of online communication in the research study conducted by the authors).

96. *Id.* (discussing early research studies on the topic).

difficulty in scheduling, and concerns about privacy.⁹⁷ Research suggests that online communication is best used to maintain healthy parent-child relationships and sustain them between physical visits.⁹⁸

In a small percentage of cases, a parent may only be able to have parenting time with the children on a supervised basis.⁹⁹ Supervised parenting time is most often ordered in cases in which one parent is abusive or neglectful to the children or cases in which one parent is abusive to the other parent, thus exposing the children to the trauma of high levels of unresolved parental conflict.¹⁰⁰ Online tools may help mend or maintain the parent-child relationship in a way that is physically safe. Current technology, such as Zoom, enables third-party additions to the video conference and, therefore, makes possible the addition of an eSupervisor (for lack of an established term) for supervised visitation.¹⁰¹

If the use of online tools enables more parents to have time with their children, then access to justice may be achieved. In many instances, a parental supervisor may be a close family member or friend (such as a grandparent), who may supervise free of charge. In other instances, parents may need to pay a third-party agency to provide visitation services.¹⁰² Some

97. *Id.* at 598 (noting the mixed results in the early studies); *id.* at 602 (“Major drawbacks of the use of [online parenting time] were related to issues of cost, availability, privacy, and safety.”).

98. *Id.* at 603. The study conducted by Michael Saini and Shely Polak found mixed views by professionals on whether and how high-conflict families should use virtual parenting time. *Id.* Although the risk of physical abuse is significantly lessened through electronic communication, parents may still engage in verbal, emotional, and psychological abuse in online or video communication. *Id.* Additionally, parents may manipulate the situation to harm the other parent or child or to gather information to be used in legal proceedings. *Id.* at 604.

99. Many state statutes authorizing supervised parenting time provide that it is only appropriate if a child is in danger. *See, e.g.*, IND. CODE § 31-17-4-2 (2020) (“However, the court shall not restrict a parent’s parenting time rights unless the court finds that the parenting time might endanger the child’s physical health or significantly impair the child’s emotional development.”).

100. *See, e.g.*, Debra Poggrund Stark et al., *Properly Accounting for Domestic Violence in Child Custody Cases: An Evidence-Based Analysis and Reform Proposal*, 26 MICH. J. GENDER & L. 1, 42 (2019) (discussing reasons why courts may order supervised parenting time). Power and control issues between parents (including domestic violence) do not necessarily lead to a court order of supervised visitation. A court generally considers whether the children would be in danger if they were with their parent in an unsupervised situation. *See, e.g.*, UTAH CODE ANN. § 30-3-34.5 (LexisNexis 2020) (“When necessary to protect a child and no less restrictive means is reasonably available however, a court may order supervised parent-time if the court finds evidence that the child would be subject to physical or emotional harm or child abuse . . . from the noncustodial parent if left unsupervised with the noncustodial parent.”).

101. *See* ZOOM, <https://zoom.us/meetings> [<https://perma.cc/ZR7H-STNL>] (last visited Apr. 12, 2020).

102. The cost of supervision varies from location to location, and the cost may also vary based on the services provided. For instance, the Child Parent Institute in California charges \$50 to \$60 per hour for supervised visitation services. *See Parenting Services*, CHILD PARENT INST., <https://calparents.org/what-we-do/parent-support-services/supervised-visitacion.html> [<https://perma.cc/9RF8-5YJG>] (last visited Apr. 12, 2020) (discussing prices for supervised visits).

agencies are beginning to advertise online supervision,¹⁰³ and other agencies may begin to advertise these types of services with more frequency in the future.

Online tools, then, have the ability to increase access to justice when parenting time is limited to online means due to either distance or safety issues. Online forums can even incorporate a third-party supervisor, if necessary, to provide parents and children time to meet with one another and to develop, work on, or maintain their relationships.

B. Tools for Resolving Disputes over the Modification of an Existing Plan

Not only can online tools be used as means of implementing a parenting arrangement but they can also be used to resolve disputes over the resulting plans or modify them. Parenting plans often last well over a dozen years, and any number of situations may require a plan to change. The needs of parents and children may change over time due to issues involving health, work, school, extended family, or activities. This section considers online parental coordination and mediation for disputes that arise during the course of the execution of a parenting plan.

1. Online Parental Coordination

A parental coordinator is a quasi-therapeutic and quasi-dispute resolution professional who helps parents mediate and arbitrate disputes under an existing parenting plan arrangement.¹⁰⁴ To date, parental coordinators are usually mental health professionals,¹⁰⁵ but more lawyers are beginning to offer these services. Parental coordinators should be trained in mediation and other types of dispute resolution. If required by the court (or in a parenting plan), the parents must submit their disputes to a parental coordinator before petitioning the court for a modification of the current plan or a contempt order seeking remedies based on a breach of the plan. Most parents who use parental coordinators are “high conflict” and need assistance in resolving disputes as they arise.¹⁰⁶

Parental coordinators do not *modify* an existing plan. Instead, their job is to help interpret a plan.¹⁰⁷ Even the most precise parenting plans cannot

103. See, e.g., *Services and Fees*, KIDS SERVICES, http://www.kidsservices.net/services_and_fees.aspx [<https://perma.cc/N4QY-CNGY>] (last visited Apr. 12, 2020) (noting a \$75 per hour fee for “Internet Supervision”).

104. Eve Orlow, *Working with Parenting Coordinators*, FAM. ADVOC., Summer 2007, at 24, 25 (describing the work of a parental coordinator and noting that parental coordination is generally only used in families with high levels of conflict post-divorce or -breakup).

105. Victoria M. Ho et al., *Parent Coordinators: An Effective New Tool in Resolving Parental Conflict in Divorce*, 74 FLA. B.J. 101, 101 (2000) (noting that in the year 2000, all parental coordinators in Florida came from the mental health profession).

106. See, e.g., Orlow, *supra* note 104, at 25 (noting that roughly 10 percent of family cases involve high amounts of conflict, and parenting coordination is a tool that may be employed in these high-conflict situations).

107. For example, the Florida courts define the role of a parental coordinator as including “the integration of skills and core knowledge drawn primarily from the areas of mental health,

account for all of life's events. Parental coordinators can employ a wide range of skills to resolve problems between parents and, as a last resort, determine how the parenting plan should apply in a given situation.¹⁰⁸

When parents submit a dispute to a parental coordinator, the first step is usually for the coordinator to conduct an investigation of the situation.¹⁰⁹ The investigation may include discussions with the parents, the child (or children), and any other people with relevant information, such as grandparents, teachers, medical professionals, or guardians ad litem.¹¹⁰ As the parental coordinator meets with the individuals, the coordinator may provide educational and coaching opportunities to all of the involved parties. Following the investigation, the coordinator will try to mediate with the parents to determine if an agreement can be reached informally.¹¹¹ If reaching a consensual agreement is not possible, the parental coordinator is charged with deciding the dispute and acting in the role of the arbitrator.¹¹² A parental coordinator may increase access to justice through more expedient dispute resolution than the traditional court system. However, private dispute resolution is never free, and one or both parents must bear the cost of the neutral coordinator.¹¹³

Parental coordinators can help the parents make decisions in the “gray areas” of parenting plans. For instance, the parties may have an agreement to make medical decisions together but may need a coordinator to help determine the best course of action for a child who has a complex medical issue with multiple avenues for treatment.¹¹⁴ Or, in a case in which a child's travel soccer team makes the child disproportionately unavailable during one parent's time, a parental coordinator may be needed to help determine how that parenting time should be treated and if any make-up time is necessary to meet the child's best interests.

To date, little has been written about moving parental coordination services online, and few parental coordinators advertise that they perform these types of services online. Perhaps online parental coordination is a growth industry that might provide access to justice for families, particularly

law, and conflict resolution.” FLA. R. FOR QUALIFIED & COURT-APPOINTED PARENTING COORDINATORS 15.020. In addition, the coordinator assists parents in “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.” *Id.* r. 15.010.

108. *See id.* r. 15.010.

109. Orlow, *supra* note 104, at 25 (discussing the process).

110. *Id.*

111. *Id.*; *see also* Elayne E. Greenberg, *Fine Tuning the Branding of Parenting Coordination: “. . . You May Get What You Need,”* 48 FAM. CT. REV. 206, 208 (2010) (discussing the ethical implications of wearing multiple hats as counselor, educator, mediator, and arbitrator).

112. Orlow, *supra* note 104, at 25.

113. *Id.* (“Compensation generally is split between the parents. Payment is required, whether or not the work is successful. The fee is set by the parenting coordinator, subject to discussion with the parents or their attorneys and subject to approval of the court.”).

114. *Id.* at 26 (discussing the use of a parental coordinator in a case involving medical decisions).

in cases in which the parents live a great distance apart. When parents live at a distance, many parents help equalize some parenting time for the “far away” parent in the summer. As the child ages, the child may not want to spend so much time in the summer away from his or her friends, sports teams, and other activities. If the parents have a dispute about whether the child should spend summer with the noncustodial parent or try to make up the time at another point in the year, they can use a parental coordinator to resolve that dispute if they cannot do so on their own. For these parents, an online parental coordinator may make sense because of the distance between the parties. The coordinator could use electronic means to interview the parties and try to resolve the dispute. If the coordinator lives close to one of the parties, the coordinator may be able to do some work in person with one party and work with the other party electronically.

An online parental coordinator could use video and telephone conferencing to investigate the situation and work with the parties. Online meeting platforms, such as Zoom, enable discussions with multiple parties at a time, and parties could even present arguments or evidence to the coordinator through such a platform.¹¹⁵ Email communications could supplement the process, particularly if the parents want to share or exchange documents or other nontestimonial evidence.

Parental coordination is a relatively new type of dispute resolution, and the practice is still evolving. Online coordination is a natural extension of the process, and it might increase access to justice through swift dispute resolution in a cooperative way, thus saving legal fees and other expenses associated with court. At this point in time, coordinators may not be willing (or may not have the necessary capabilities) to perform these services online. A streamlined and online way to provide parental coordination may be particularly attractive to younger parents who are “digital natives,” meaning that they have never lived their lives without computers and the internet.¹¹⁶

2. Online Remediation

Parents who want to *change* their parenting or financial plans could use online mediation to achieve access to justice. While parent coordinators simply interpret conflicting ideas of how plans should be implemented, online mediation (or re-mediation) could assist parents in changing their obligations on a permanent basis.

As discussed above, online tools, such as parental communication apps, allow parents to make minor, limited-time changes to their plans.¹¹⁷ The tools needed for a simple weekend swap are different, however, from the tools necessary to make a permanent change to a plan. Parents who want to change from an every/other weekend plan to an every/other week plan (i.e., from primary custody to joint custody) would be better served through

115. See *supra* note 101 and accompanying text.

116. Clay Halton, *Digital Native*, INVESTOPEDIA (July 15, 2019), <https://www.investopedia.com/terms/d/digital-native.asp> [<https://perma.cc/444A-2EXD>].

117. See *supra* Part II.A.1.

mediation than informal flexible time-sharing, particularly because major changes in parenting time can affect financial obligations, such as child support.¹¹⁸ Another example might include a relocation that would change a parenting-time arrangement from joint custody to primary custody due to distance.

Many scholars have discussed the benefits and drawbacks of online mediation.¹¹⁹ In addition, a burgeoning literature is emerging in the area of online mediation in family cases specifically.¹²⁰ Many of the advantages of online mediation generally apply to family cases. Those advantages include cost efficiency, flexibility in working with parties who are at a great distance from one another, and convenience. In the family law area, online mediation may also help with physical safety because the parties are not in the same building at the same time. The disadvantages are also generally the same, no matter the topic of mediation. When parties mediate through technology, some communication may be lost, particularly in text-based interactions but also in video or audio mediation. In addition, security concerns may arise, both within the technology (i.e., hacking) or outside of the technology (i.e., extra people listening in on the mediation undetected).¹²¹

118. See, e.g., *Child Custody and Support*, A.B.A. (Mar. 18, 2013), https://www.americanbar.org/groups/public_education/resources/law_issues_for_consumers/childs_support_sharedcustody/ [<https://perma.cc/L8E9-EBCN>] (last visited Apr. 12, 2020) (giving a basic primer on the relationship between child custody and child support).

119. See, e.g., Sarah Rudolph Cole & Kristen M. Blankley, *Online Mediation: Where We Have Been, Where We Are Now, and Where We Should Be*, 38 U. TOL. L. REV. 193 (2006) (discussing the past, present, and future of online mediation, primarily for commercial disputes); Llewellyn Joseph Gibbins et al., *Cyber-mediation: Computer-Mediated Communications Medium Massaging the Message*, 32 N.M. L. REV. 27 (2002) (discussing the basics of online mediation, its variations, its potentials, and room for improvement); James C. Melamed, *Mediating on the Internet: Today and Tomorrow*, 1 PEPP. DISP. RESOL. L.J. 11 (2000) (discussing online mediation and giving practical advice for mediators).

120. See, e.g., Abraham Kuhl, *Family Law Online: The Impact of the Internet*, 21 J. AM. ACAD. MATRIM. LAW. 225, 236–43 (2008) (discussing the emergence of online family mediation and the benefits and concerns for parties in this area); Fernanda S. Rossi et al., *Shuttle and Online Mediation: A Review of Available Research and Implications for Separating Couples Reporting Intimate Partner Violence or Abuse*, 55 FAM. CT. REV. 390 (2017) (discussing the use of online mediation in high-conflict family cases).

121. Elisabeth Kruse eloquently summarized the benefits and drawbacks of online family mediation:

Remote technology may even lead to remote mediation. Video or web-based mediations can be used when parties are disbursed geographically and/or when parties are unable to afford to travel to the mediation session. Mediation over the Internet can provide savings when compared with traditional litigation, which can be extremely costly. However, cyber-mediation loses the dynamic of traditional mediation because it takes place in front of computer screens, rather than with face-to-face communication, which is one of the benefits of mediation—giving people a chance to vent their feelings and resolve issues together. While online dispute resolution, or cyber-mediation may be helpful in handling minor economic disputes in other civil cases, it is not likely that family law mediations will be replaced altogether by online sessions anytime in the near future.

Elisabeth Kruse, *ADR, Technology, and New Court Rules—Family Law Trends for the Twenty-First Century*, 21 J. AM. ACAD. MATRIM. LAW. 207, 214–15 (2008).

Some courts are incorporating ODR specifically in family cases. The Nevada Family Mediation Center partnered with Modria, a leading ODR platform provider, to provide online family mediation for divorcing couples. Modria reported significant success in resolving disputes quickly, affordably, and in a simplified manner.¹²² Although the study primarily involved divorcing couples, similar results could be expected for couples modifying a parenting plan, as opposed to those creating one for the first time. In other cases, mediators offer their services online, even if a court does not require online participation. In these cases, the parties would have the ability to choose to mediate online for any of the reasons noted above.

Online mediation can impact access to justice by helping parents change their plan without the need of an expensive court hearing. Online mediation may have some additional cost, speed, and safety benefits that are not available in traditional face-to-face mediation. In some instances, online mediation is asynchronous, which allows each parent to participate at their leisure. For many parents, that convenience may speed up the process, particularly if the parents are busy or work unusual schedules. In other situations, asynchronous participation may permit one parent (or both) to procrastinate, which not only lengthens the process but also may increase frustration and ill will.

As online services are added to courts, online family courts and online family mediation will likely increase over time. If well designed, these platforms can help increase access to justice in the creation and modification of parenting and financial plans.

CONCLUSION

In family cases, true access to justice can be found when parents live out the promises and obligations in their parenting and financial plans. Online resources are available to help parents maintain their obligations to one another, whether that be through maintaining lines of communication with parental communication apps or through ODR. These tools can provide affordable solutions for parents in separate homes to uphold commitments, at least until the time the child becomes a legal adult. These tools can also help interpret and modify parents' obligations when questions arise or circumstances change. Online resources, however, are not magic wands; but if parents are willing to work on their communication and resolve differences peaceably, these tools can significantly aid their efforts for the sake of their family.

122. See *Clark County Family Mediation ODR Case Study*, TYLER TECHNOLOGIES, <https://www.tylertech.com/resources/case-studies/clark-county-family-mediation-odr-case-study> [<https://perma.cc/XF32-NHFU>] (last visited Apr. 12, 2020) (discussing the results of the pilot study).