

8TH JUDICIAL DISTRICT GUIDELINES FOR PARENTING COORDINATION

Overview and Definitions

Parenting coordination is a child-focused alternative dispute resolution (ADR) process in which a mental health or legal professional with training and experience assists high conflict parents to implement their parenting plan by facilitating the resolution of their disputes in a timely manner. With prior approval of the parties and the court, the PC may make decisions within the scope of the court order or appointment contract.

The overall objective of parenting coordination is to assist parents in high conflict to implement their parenting plan, to monitor compliance with the details of the plan, to resolve conflicts regarding their children and the parenting plan in a timely manner, and to protect and sustain safe, healthy and meaningful parent-child relationships.

Parenting Coordination is most frequently reserved for those high conflict parents who have demonstrated a sustained inability or unwillingness to make parenting decisions on their own, to comply with parenting agreements and orders, to reduce their child-related conflicts, and/or to protect their children from the impact of that conflict.

Because the Parent Coordinator (“PC”) makes recommendations and/or decisions for the parties and reports to the court, the PC will be appointed by and be responsible to the court. The power and authority inherent in the role of the PC are substantial whether stipulated by the parties or assigned by the court. Therefore, the following guidelines for PC practice and programs are created, and will be reviewed and modified as necessary.

These protocols recognize the complexities of some parenting dynamics. The alternative dispute resolution process described above as central to the PC’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 co-parent. In those cases of domestic violence where one parent seeks to obtain and maintain power and control over the other, the role of the PC changes to an almost purely

enforcement function. Here, the PC is likely to be dealing with a court order, the more detailed the better, rather than a mutually agreed upon parenting plan. The role of the PC then is to ensure compliance with the details of the order and to test each request for variance from its terms with an eye to protecting the custodial parent's autonomy to make decisions based on the children's best interests and guarding against manipulation by the abusing parent. Since ADR techniques in such cases may have the effect of maintaining or increasing the imbalance of power and the victim's risk of harm, protocols and procedures are included for this type of case. PCs must always routinely screen prospective cases for domestic violence and must decline to accept such cases if they do not have specialized expertise and procedures to effectively manage domestic violence cases involving an imbalance of power, control and coercion. The Court will ensure that at all times the safety of parents and children are of paramount and overriding importance.

The PC's role is not to be confused with a forensic evaluation, the practice of law, or therapy.

The *Protocols for Parenting Coordination* include different levels of guidance:

- Use of the term “may” in the *Protocols* indicates a practice that the PC should consider adopting, but from which the PC can deviate in the exercise of good professional judgment;
- Most of the *Protocols* use the term “should”, which indicates that the practice described is highly desirable and should be departed from only with very strong professional reason.
- The use of the term “shall” in the *Protocols* is a higher level of guidance to the PC, indicating that the PC does not have discretion to depart from the practice described.

In creating these protocols, due consideration was given to the suggestions published by the Association of Family and Conciliation Courts (AFCC) Parenting Coordination Standards Task Force: Guidelines for Parenting Coordination (2005).

I. Education and Training

A PC shall be qualified by education and training to undertake parenting coordination and shall continue to develop professionally in the role.

A. The PC will be required to have training and experience in family mediation and professional interaction with high conflict families. The PC shall have completed the training required by then - current rules adopted by the 8th Judicial District, and as they may be amended or modified, or have sufficient years of professional experience to seek a waiver (whether temporary or conditional as determined by the ADR Administration of the 8th Judicial District) of this requirement.

B. The PC shall be a licensed mental health professional or licensed attorney with experience in an area relating to families, or a certified family mediator with a master's degree in a mental health field.

C. The PC should have extensive practical experience in the profession with high conflict or litigating parents.

D. The PC shall have completed training approved by the ADR Administration of the 8th Judicial District in the parenting coordination process, family dynamics in separation and divorce, parenting coordination techniques, domestic violence and child maltreatment, and court specific parenting coordination procedures.

E. A PC must acquire and maintain professional competence in the parenting coordination process. A PC shall regularly participate in educational activities promoting professional growth. A PC may participate in peer consultation or mentoring to receive feedback and support on cases and such professional consultation is specifically permitted.

F. A PC must decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of a case are beyond the PC's skill or expertise, particularly when elements of domestic violence surface.

G. In the first twelve (12) months after adoption of these protocols, professionals who have significant exposure with high conflict families but lack some part of the criteria noted above, may petition the District, through the Office of Court Administration's Office of ADR and Court Improvement, for waiver of a qualification.

II. Impartiality

A PC shall maintain impartiality in the process of parenting coordination. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

- A. A PC must withdraw if the PC determines he or she cannot act in an impartial manner;
- B. A PC shall neither give nor accept a gift, favor, loan or other item of value from any party having an interest in the parenting coordination process. During the parenting coordination process a PC shall not solicit or otherwise attempt to procure future professional services or positions from which the PC may profit.
- C. A PC shall not coerce or improperly influence any party to make a decision.
- D. A PC shall not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting coordination process.
- E. A PC shall not accept any engagement, provide any service or perform any act outside the role of PC that would compromise the PC's integrity or impartiality in the parenting coordination process.

III. Conflict of Interest

A PC shall not serve in a matter that presents a clear conflict of interest.

- A. A conflict of interest arises when any relationship between the PC and the participants or the subject matter of dispute compromises or appears to compromise a PC's impartiality.
- B. A PC must disclose potential conflicts of interest as soon as practical after a PC becomes aware of the interest or relationship giving rise to the potential conflict.
- C. After appropriate disclosure, the PC may serve with the written agreement of all parties and consent of the Court. However, if a conflict of interest clearly impairs a PC's impartiality, the PC must withdraw regardless of the express agreement of the parties.
- D. During the parenting coordination process, a PC will not create a conflict of interest by providing any services to any party that are not directly related to the parenting coordination process.

E. A PC may make referrals to other professionals to work with the family, but shall avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration can be given or received by a PC for professional referrals.

IV. Prohibition Against Multiple Roles

A PC shall not serve in dual sequential roles.

A. A PC shall not serve in multiple roles in a case that create a professional conflict.

1. A child's attorney or child advocate shall not become a PC in the same case.

2. A mediator or custody evaluator, after completion of an evaluation, shall be cautious about becoming a PC in the same case afterward, even with the consent of the parties, because of the differences in the role and potential impact of the role change. However, the mediator or evaluator is not prohibited from undertaking the parenting coordinator role, but may not thereafter resume the role of mediator or custodial evaluator.

3. A PC shall not become a custody evaluator either during or after the term of a PC's involvement with the family.

4. A PC shall not be appointed after serving as a therapist, consultant, or coach, or serve in another mental health role to any family member.

5. A PC shall not become a therapist, consultant, or coach or serve in any other mental health role to any family member, either during or after the term of the PC's involvement.

6. A PC shall not become one client's lawyer, either during or after the term of the PC's involvement, nor shall one client's lawyer become the PC in that client's case.

B. A PC should attempt to facilitate resolution of issues by agreement of the parties; however, the PC does not act in a formal mediation role. An effort toward resolving an issue which may include therapeutic, mediation, educational, and negotiation skills, does not disqualify a PC from deciding an issue (when such authority has been given) that remains unresolved after efforts of facilitation are unsuccessful.

V. Limits of Confidentiality

A PC shall inform the parties of the limitation on confidentiality in the parenting coordination process. Information shall not be shared outside of the parenting coordination process except for legitimate and allowed professional purposes. A PC shall maintain confidentiality regarding the sharing of information outside of the scope of the parenting coordination process, except as provided by court order or by written agreement of the parties.

A. Parenting coordination is not a confidential process, either for communications between the parties and their children and the PC, or for communications between the PC and other relevant parties to the parenting coordination process, or for communications with the court.

B. Appropriate provisions need to be included in the written agreement and/or court order for the effective waiver of all privileges and rules of evidence or professional conduct regarding confidentiality. In addition, a clear statement must be provided that the PC will not provide either party with legal advice, representation, therapy or counseling, and the parents are advised to seek any such advice from independent providers of their own choice.

C. A PC must inform the parties of the following limitation of confidentiality regarding serious matters:

1. The PC will report suspected child abuse or neglect to child protective services whether or not a mandatory or voluntary reporter under state or federal law; and

2. The PC will report to law enforcement or other authorities if the PC has reason to believe that any family member appears to be at a serious risk to harm himself or herself, another family member or third party.

VI. Scope of Parent Coordinator Role

A PC shall assist the parties in reducing harmful conflict and in promoting the best interests of the children consistent with the roles and functions of a PC.

A. A PC serves an assessment function. The PC should review the custody evaluation , other relevant records, interim or final court orders, information from interviews with parents and children and other collateral sources, domestic violence protection orders, (and any other applicable information involving criminal assault, domestic violence or

child abuse), educational records, and analyze the impasses and issues of the family.

B. A PC serves an educational function. The PC should educate the parties about child development, divorce research, the impact of their behavior on the children, parenting skills, and communication and conflict resolution skills. The PC should coach the parties about these issues, enabling the parties to develop more constructive and productive behavior that promotes stable family relationships. A PC should empower parties to resolve future conflicts with learned appropriate skills, and to disengage from interpersonal conflict.

C. A PC serves a coordination/case management function. The PC should work with the professionals and systems involved with the family (e.g. mental health, health care, social services, education, legal) as well as with extended family, stepparents, and significant others.

D. A PC serves a conflict management function. The PC's primary role is to assist the parties to work out disagreements regarding the children with minimal or decreasing conflict. As a neutral facilitator the PC may utilize dispute resolution skills from principles and practices of negotiation, mediation and arbitration. To assist the parents in reducing conflict, the PC may monitor the faxed, emailed, or written exchanges of parent communications and suggest more productive forms of communication that limit conflict between the parents. In order to protect the parties and children in domestic violence cases involving power, control and coercion, it is imperative that a PC tailor all techniques used so as to avoid offering the opportunity for further coercion.

E. A PC may serve a decision-making function. When parents are not able to decide or resolve disputes on their own, the PC can be empowered to make decisions to the extent described in the court order, or to make reports or recommendations to the court for further consideration. PCs must communicate their decisions in a timely manner in person or by fax, email or telephone. In the event decisions are provided orally, a written version shall follow in a timely manner

F. A PC has no other role. A PC will not offer legal advice, representation, therapy or counseling.

VII. Authority Granted to PC

A PC should attempt to facilitate agreement between the parties in a timely manner on all disputes regarding their children as they arise. When parents are unable to reach agreement, and if it has been ordered by the Court, or authorized by consent, the PC will decide the disputed issues.

A. A PC may make recommendations to the parties or the Court consistent with the role and limitations described in these protocols.

B. By Court order following consent of the parties and all counsel a PC may be granted the authority to make decisions for the parties when they cannot agree, and/or the PC may be allowed to make recommendations to the parties or the court.

B. A PC shall not make determinations that substantially alter custody orders, relocation determinations, religion or child support.

C. A PC shall have only the authority that is delegated in the court order or as provided by the written consent of the parties. If so written in the order or consent agreement, a PC may have authority to resolve some or all of the following types of issues:

1. Minor changes or clarification of parenting time/access schedules or conditions including vacation, holidays and temporary variation from the existing parenting plan;
2. Transitions/exchanges of the children including date, time, place, means of transportation and transporter;
3. Health care management including medical, dental, orthodontic, and vision care;
4. Child-rearing issues;
5. Therapy, counseling, or other mental health care for the children;
6. Psychological testing or other assessment of the children and parents;
7. Education or daycare including the school choice, tutoring, summer school, participation in special education testing and programs, or other educational decisions;

8. Enrichment and extracurricular activities including camps, sports, and jobs;
9. Religious observances and education;
10. Children's travel and passport arrangements;
11. Clothing, equipment, and personal possessions of the children;
12. Communication between the parents about the children including telephone, fax, email, notes in backpacks, etc.
13. Communication by a parent with the children including telephone, cell phone, pager, fax and email when they are not in that parent's care;
14. Alteration of appearance of the children including haircuts, tattoos, ear and body piercing;
15. Role of and contact with significant others and extended families;
16. Substance abuse assessment or testing for either or both parents or a child, including access to results;
17. Parenting classes for either or both parents.

C. The PC should use or gather written or verbal statements of the dispute from each party, as well as other relevant sources of information. The methodology used by the PC shall be fair to both parties, and be transparent to both the court and the parties. Each party shall be given the opportunity to be heard in the process. Notice shall be given as to what is expected from the participation of the parties and the consequences of non-participation. If on party refuses to cooperate after notice, then the PC may continue to resolve the dispute.

D. When granted the authority to resolve a selected issue, the PC shall issue a written resolution of the dispute, or a verbal decision in time sensitive matters, which may be followed by a written decision. The PC or one of the attorneys for the parents or children should prepare any order needed to effectuate the implementation of the decision, and arrange for submission, signing, filing, and dissemination to all parties and counsel.

E. A PC shall and must refrain from making any decision that would alter legal custody and physical custody from one parent to the other or substantially change the parenting plan. Such major decisions are more properly within the scope of judicial authority. In limited cases, the PC may need to make a temporary suspension in the parenting plan if a parent is impaired in his or her functioning and incapable of fulfilling his or her court-ordered parenting functions until further information and assessment is obtained and the court has assumed decision-making responsibility. In such a case the PC shall immediately advise the court, counsel and the parties.

F. The PC shall notify the Attorney for the Child/Children of any anticipated substantive change to the status quo of the children, with an opportunity by the Attorney for the Child/Children to be heard by the PC before implementation when exercised by the Attorney for the Child/Children. This includes any recommendations for assessment, testing, therapy or counseling.

G. Under no circumstances shall a PC delegate any portion of the PC process to anyone else. The power provided to the PC is personal in nature and not be assumed by third parties.

VIII. Court Order

A PC shall serve by formal order of the court and/or stipulation of the parties which shall clearly and specifically define the PC's scope of authority and responsibilities.

A. A Court order is necessary to provide the PC authority to work with the parents outside of the adversarial process, to obtain information, and to make recommendations and decisions as specified in the order.

B. In addition to the court order for the PC, a written agreement between the parties and the PC may be used to detail specific issues not contained in the court order, such as fee payments, billing practices and retainers.

C. The Court order must specify a term of service for the PC, including starting and ending dates. Parents can request that a PC continue for additional terms of service following the expiration of each term. Similarly the PC can give notice prior to the end of the term of service that the PC will not continue to serve as PC after expiration of the term.

D. A PC should not initiate services until the PC has received a fully executed and filed court order appointing the PC.

IX. Explanation of Role

A PC must facilitate the participants' understanding of the parenting coordination process so that they can give informed consent to the process.

A. The position of the PC can be one of considerable authority and power. If applicable, it is important that parents fully understand the extent of the parental rights and power they are assigning to the PC in the form of decision-making. They should understand the limited nature of the confidentiality of the process, the professional persons with whom the PC will be authorized to consult or obtain information, and what the parents' rights are in seeking redress with the court.

B. In the first session, a PC will carefully review the nature of the PC's role with the parents, to ensure that they understand what the parenting coordination process involves. In cases of domestic violence involving power, control and coercion, the PC must hold individual sessions with the parties to convey this information.

X. Fees and Costs

A PC shall fully disclose and explain the basis of any fees and charges to the participants.

A. All charges for parenting coordination services must be based upon the actual time expended by the PC. All fees and costs shall be appropriately assessed between the parties as directed by the court order of appointment, or as agreed upon in the PC's written fee agreement with the parties but only with the approval of the court. The court, rather than the PC, should make a determination of the appropriate ratio of payment based on the available financial data. The Court should be advised of any reasons to consider altering the original payment ratio.

B. Prior to beginning the parenting coordination process, and in writing, a PC shall explain to the parties and counsel the basis of fees and costs and the method of payment and any fees associated with postponement, cancellation and/or nonappearance, as well as any other items, and the parties' pro-rata share of the fees and costs as determined to the court order or agreed to by the parties with approval of the court. In cases of domestic violence involving power, control and coercion, the PC must hold individual sessions with the parties to convey this information.

C. Activities for which a PC may charge typically will include, but are not limited to, time spent interviewing parents, children and collateral sources of information; preparation of agreements; correspondence, decisions and reports; review of records and correspondence; telephone and electronic conversation; travel; court preparation; and appearances at court, meetings, or conferences.

D. The PC is expected to comply with any practice rules regarding fees. A PC may request a retainer or advance deposit prior to starting a case. The parties should be billed on a regular basis and notified when the retainer or advance deposit, if any, is to be replenished.

E. A PC must maintain records necessary to support the charges for services and expenses and should provide a detailed accounting of those charges to the parties, their counsel, and the court on a regular basis.

XI. Domestic Violence Issues

A Parenting Coordinator shall and must routinely screen all cases for domestic violence.

A. The safety of parents and children shall be paramount at all times. A PC shall make ongoing efforts to stay abreast of domestic violence research, effective intervention, safety measures and other professional advances.

B. A PC shall scrupulously adhere to all protective orders.

C. A PC must decline to accept such cases if he/she does not have specialized expertise to effectively manage domestic violence cases, or any case involving an imbalance of power, control and coercion.

D. In those cases of domestic violence where one parent seeks to obtain and maintain power and control over the other, the role of the PC changes to an almost purely enforcement function. In domestic violence cases the PC's role is to ensure compliance with the details of the order and to test each request for variance from its terms with an eye to protecting the custodial parent's autonomy to make decisions based on the children's best interests and guarding against manipulation by the abusing parent.

- E. In cases of domestic violence, a PC should tailor techniques used and services provided to avoid a situation where an abuser can continue the pattern of power, control and coercion.
- F. In cases of domestic violence, a PC shall ensure that interviews and sessions with the parties are conducted separately, even if the parties should request joint meetings.
- G. A PC should always be aware that an abused parent and the children could well be at increased risk if information is shared with the abusing parent. The PC must alert the protected parent to the disclosure in advance to enable the parent to take needed safety precautions.
- H. A domestic violence situation may form the basis for a PC to recommend to the court an unequal division of fees and costs, placing more of the financial burden on the abusing parent. In such cases, the protected parent's requests for assistance by the PC shall not form the basis for the parent to pay an increased amount of fees.

XII. Communications and Reports

A PC will communicate with all parties, counsel, children, and the court in a manner which preserves the integrity of the parenting coordination process and considers the safety of the parents and children. The PC will have access to persons involved with family members and to documentary information necessary to fulfill the responsibilities of the assignment.

A. Because parenting coordination is a non-adversarial process designed to reduce acrimony and settle disputes efficiently, a PC may engage in ex-parte (individual) communications with each of the parties and/or their attorneys, unless prohibited in the order of appointment, PC agreement or stipulation. The PC may initiate or receive *ex-parte* oral or written communications with the parties and their attorneys, legal representatives of the children, and other parties relevant to understanding the issues. The PC will do so in an objective, balanced manner that takes into consideration the possibility or perception of bias. The PC should communicate agreements, recommendations, or decisions (if applicable) to all parties and counsel as nearly contemporaneous as practicable.

B. The PC will never communicate *ex-parte* with the judge. If written reports are provided to the parties and counsel, the PC should follow the court's rules or instructions regarding whether the court should receive a copy.

C. The PC will have access to any person involved with family members, including but not limited to, the custody evaluator, lawyers, school officials, and physical and mental health care providers. The PC shall have the authority to meet with the children (upon prior notice to the Attorney for the Child/Children), any stepparent or person acting in that role, or others the PC determines to have a significant role in contributing to or resolving the conflict. The PC should notify any such collateral sources that information obtained from them is not confidential and that it may be used in making decisions or writing reports or recommendations to or testifying in court.

D. The PC shall have access to all orders and pleadings filed in the case, as well as the custody evaluation report, school and medical records of the children, and reports of psychological testings that were generated prior to, during or after the pendency of the case. The court order will direct the parties to execute releases and consents permitting access to such data and other relevant information.

E. The PC should have initial individual and/or joint interviews with the parties. The PC may want to interview the children if the PC has the appropriate training and skills and upon prior notice to the Attorney for the Child/Children. The PC may interview any individuals who provide services to the children as needed to assess the children's needs and wishes. The communication between the parties may be in joint fact-to-face meetings, telephone conference calls, individual face-to-face or telephone meetings, email or fax. The PC will determine whether separate or joint sessions are most appropriate at any particular time. In cases of domestic violence involving power, control or coercion, the PC interviews and sessions with the parties are always to be conducted individually, even if the parties should request joint meetings.

F. The PC must be alert to the reasonable suspicion of any acts of domestic violence directed at the other parent, a current partner or the children. The PC will adhere to any protection orders, and take whatever measures may be necessary to ensure the safety of the parties, the children and others.

G. The PC must be alert to the reasonable suspicion of any substance abuse by either parent or child, as well as any psychological or psychiatric impairment of any parent or child.

H. The PC should keep notes regarding all communication with the parties, the children and other persons with whom the PC speaks about the case.

I. A PC must document in writing all resolutions agreed upon by the parties or determined by arbitration, noting the process by which the agreement or decision was made.

J. The PC must maintain records in a manner that is professional, comprehensive and inclusive of information and documents that relate to the parenting coordination process and that support decisions and recommendations by the PC.

XIII. OUTCOMES

A PC will not engage in marketing practices that contain false or misleading information. A PC will ensure that any advertisements regarding qualifications, services to be rendered, or the parenting coordination process are accurate and honest. A PC will not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

A. A PC should not promise or make claims to any parent or child to achieve a specific outcome.

B. A PC should advise the parties that they always retain the right to seek court review of any outcomes of the parent coordination process.

XIV. REGULATION

A. The ADR Administration of the 8th Judicial District shall have authority to accept and process PC applications, interview applicants, set qualifications, and from time to time offer training for PCs.

B. These protocols will be reviewed from time to time and may be modified or revised. All concerns or comments should be forwarded in writing to the ADR Administration, c/o the 8th Judicial District Office, 92 Franklin Street, Buffalo, New York 14202.

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