

THE ROLE OF THE PARENTING COORDINATOR

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Introduction

Parenting coordination is a child focused alternative dispute resolution process in which a qualified impartial person with mediation training and experience assists high conflict parents to implement their parenting plan. Parenting coordination is a response to the substantial number of children caught in the middle of custody disputes and post-divorce litigation.¹ According to the Association of Family and Conciliation Courts Task Force on Parent Coordination (2002), “[p]arent coordination is an innovative approach which has been repeatedly recommended in the professional literature as a means to deal with high conflict and alienating families in domestic relations proceedings before the Court.”²

A number of states are defining the role of Parenting Coordinator in their statutes. The New Jersey Parenting Coordination Pilot Program, initiated in March 2007 and approved by the Supreme Court of New Jersey, was formally terminated in 2012. Nonetheless, judges continue to regularly appoint parenting coordinators and attorneys continue to request the services of parenting coordinators. The overview section of the program when initiated in 2007, as set forth by the Administrative Office of the Courts, stated:

[a] Parenting Coordinator is a qualified neutral person appointed by the court, or agreed to by the parties, to facilitate the resolution of day-to-day parenting issues that frequently arise within the context of family life when parents are separated. The courts may appoint a Parenting Coordinator at any time during a case involving minor children after a parenting plan has been established when the parties cannot resolve these issues on their own. The Parenting Coordinator’s goal is to aid

¹ Boyan, S. and Termini, A.M. (2005), *The Psychotherapist as Parent Coordinator in High Conflict Divorce: Strategies and Techniques* (p. 29), New York: The Haworth Press, Inc.

² *Id.*

parties in monitoring the existing parenting plan, reducing misunderstandings, clarifying priorities, exploring possibilities for compromises and developing methods of communication that promote corroboration in parenting. The Parenting Coordinator’s role is to facilitate decision making between the parties or make such recommendations, as may be appropriate, when the parties are unable to do so. One primary goal of the Parenting Coordinator is to empower parents to develop and utilize effective parenting skills so that they can resume the parenting and decision making role without the need for outside intervention. The Parenting Coordinator should provide guidance and direction to the parties with the primary focus on the best interests of the child by reducing conflict and fostering sound decisions that aid positive child development.³

Parenting Coordinators are viewed as being in a unique position to help the over-burdened legal system deal with the needs of high conflict families in ways that judges, attorneys, guardian *ad litem* (assuming they are attorneys) and psychotherapists cannot. What is unique about Parenting Coordinators is that they are given a certain amount of decision making authority; they have access to the families; and they possess the therapeutic skills and expertise to promote behavioral change in the parents for the best interests of their children. The chart below demonstrates the unique position that Parenting Coordinators have in comparison to judges, attorneys, guardian *ad litem* and psychotherapists.⁴

Professional	Authority	Access	Clinical Skills
Judge	Yes	?	No
Attorney	No	No	No
Guardian <i>ad Litem</i>	Some	Yes	No*

³ <http://www.judiciary.state.nj.us>. For purposes of this article, comments are made consistent with the Parenting Coordinator Guidelines, despite the fact that they are no longer formally in operation.

⁴ Boyan, S. and Termini, A.M., *supra* at 30; *Source*: Ward (1997, p. 24)

Psychotherapist	No	?	Yes
Parent Coordinator	Some	Yes	Yes**

* Assuming the guardian is an attorney. If the Guardian *ad litem* is an attorney with a mental health background, then he/she would possess clinical skills.

**Assuming the parent coordinator is a practicing mental health professional or is an attorney with a mental health background.

Two pioneers in the parenting coordination movement have been Carla Garrity and Mitch Baris, who wrote the first book on parenting coordination, titled *Caught in the Middle: Protecting the Children of High Conflict Divorce* (1994).⁵ According to Garrity and Baris, a Parenting Coordinator is a professional who has a unique background in both family law and psychotherapy. Parenting coordination is a quasi-legal, mental health alternative dispute resolution process that combines assessment, education, case management, conflict management and some decision making functions.⁶ The Parenting Coordinator has varied functions, such as assisting parents in developing a detailed parenting plan and/or monitoring parents' compliance with their agreement or Court Order, mediating child related disputes between the parents, teaching parents how to minimize conflict, teaching parents effective communication skills and advising parents about children's issues in divorce and child development. In performing their unique role, Parenting Coordinators, with authorization from the parents, must often consult with other professionals working with the family.

It has been suggested that Parenting Coordinators should be used in situations where parents have severe personality/character disorders and are locked in ongoing impasses and are chronically

⁵ *Id.* at 31

⁶ The AFCC Task Force on Parenting Coordination (2005), Guidelines for Parenting Coordination.

litigating; parents who have difficulty in making important mutual and timely decisions, requiring assistance coordinating their parenting efforts, but who have minimal characterological disorders; potentially abusive situations where there are ongoing but unsubstantiated allegations of abuse; and parents who have demonstrated intermittent mental illness.⁷ The Association of Family and Conciliation Courts (AFCC) has been very active in defining the role of Parenting Coordinators. According to the AFCC Guidelines (2005), “[t]he overall objective of parenting coordination is to assist high conflict parents 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. “High conflict,” by one state statute, has been defined as,

any action for divorce, paternity, or guardianship where minor children are involved and the parties demonstrate a pattern of ongoing (a) litigation, (b) anger and distrust, (c) verbal abuse, (d) physical aggression or threats of physical aggression, (e) difficulty communicating about and cooperating in the care of their children, and (f) conditions that in the discretion of the court warrant the appointment of a parent coordinator.⁸

Appointment of Parenting Coordinator

Generally, a Court, after finding good cause shown or upon agreement of the parties, may appoint a Parenting Coordinator in any action involving parenting responsibility or parenting time

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Id. at 31, citing Johnston, J. and Roseby, V. (1997) *In the name of the child: A developmental approach to understanding and helping children of conflicted and violent divorce*. New York: Simon and Schuster

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Id. (p. 33), citing Oklahoma Parenting Coordinator Act, May 2003, <http://www.oscn.net>

of a minor child.⁹ The appointment may be made at any stage in the proceeding after entry of an Order establishing child custody and/or parenting time.¹⁰ In this State, the Court may not appoint or consent to the appointment of a Parenting Coordinator in any case with an active temporary or final restraining order issued pursuant to the Prevention of Domestic Violence Act.¹¹ The parties may agree to a specific person to serve as the Parenting Coordinator upon the Court's approval or the Court may appoint a Parenting Coordinator.¹² Appointing a Parenting Coordinator does not diminish the Court's exclusive jurisdiction to decide fundamental issues of custody, parenting time or support and its authority to manage and control the case. The Court may order the appointment of a Parenting Coordinator upon application of either party, upon a joint application or on its own motion.¹³

Areas of Decision-Making Authority

The order of appointment of a Parenting Coordinator may specify those matters which the Parenting Coordinator is authorized to address. The order of appointment may also specify which recommendations will be immediately effective and which will require Court review by the filing of a motion before taking effect.¹⁴

The order of appointment may authorize the Parenting Coordinator to make

⁹ <http://www.judiciary.state.nj.us>, *supra*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

recommendations to the parties and/or attorneys, to implement an agreement between the parties, or to make a recommendation during time sensitive circumstances. By way of illustration, but not limitation, the order of appointment may authorize the Parenting Coordinator to make recommendations regarding the following areas:¹⁵

(A) Minor alterations or clarifications of parenting time/access schedules or conditions with respect to weeknights, weekends, holidays or vacation parenting time that do not substantially alter the existing parenting plan.

(B) Transitions/exchanges of the children, including date, time, place, means of transportation and transporter.

(C) Health care management, including medical, dental, orthodontic and vision care.

(D) Implementation of any custody and visitation order.

(E) Child rearing issues, such as manner of discipline.

(F) Child care arrangements such as day care, babysitting or both.

(G) Referral to professionals which will help improve family functioning, such as psychotherapists or other mental health caregivers, including substance abuse assessment, psychological testing or assessment, or counseling for the parents and/or children.

(H) Parenting classes for either or both parents.

(I) First and last dates of summer vacation.

(J) Schedule and conditions of communication of a parent with the child(ren) when they are not in that parent's care, including telephone, cell phone, pager, fax and email.

(K) Selection and scheduling of activities such as educational, day care, tutoring, summer

¹⁵ *Id.*, AFCC Guidelines, *supra*, at 13-14

school, participation in special education, testing and programs or other major educational decisions.

(L) Enrollment in enrichment and extracurricular activities, including camps and jobs.

(M) Religious observances and education.

(N) Issues involving the children's clothing, equipment and personal possessions.

(O) Communication between the parents about the children, including telephone, fax, email, notes and backpacks, etc.

(P) Role of and contact with significant others and extended families.

(Q) Certain minor financial issues, such as payment for the children's extracurricular activities, day care services, transportation between households, etc.

® Children's miscellaneous travel issues, including travel arrangements, whether they can travel alone, passport arrangements, etc.

Limitations on Decision Making Authority

In most states that use Parenting Coordinators, there are limitations on their decision-making authority. Typically, each jurisdiction defines the area and degree of authority, including limitations, granted to the Parenting Coordinator.¹⁶ In New Jersey, it is understood that the Parenting Coordinator may not make any modification to any order, judgment or decree, unless all parties agree and enter into a consent order.¹⁷ It is also generally understood that there are certain areas in which a Parenting Coordinator may not make recommendations. By way of illustration, but not limitation, a Parenting Coordinator may not make recommendations regarding the following areas:

(A) Determining or resolving major financial issues, such as child support.

¹⁶ Boyan, S. and Termini, A.M., *supra* at 36.

¹⁷ <http://www.judiciary.state.nj.us>, *supra*.

(B) Modifying a prior parenting plan, decree or order in a manner that would reduce the total parenting time of either parent or that would change the designation of parent of primary residence.

© A determination of parenting plan or orders.

(D) Permitting the relocation of the residence of the child or permitting the removal of the child from the State of New Jersey.

(E) Determining which religion the children will be raised.

(F) Creating binding parenting orders.

Questionable Areas of Decision-Making Authority

Given that the New Jersey Parenting Coordinator Pilot Program is no longer formally in effect, there are areas the Parenting Coordinator may be asked to address, but which may not be appropriate for the Parenting Coordinator to address. These could be considered questionable areas of the Parenting Coordinator's decision-making authority. For instance, a Parenting Coordinator was involved in a matter in which she believed that one parent should have supervised visitation, but was unsure if she had decision-making authority in this area. Accordingly, the Parenting Coordinator wrote a letter to the attorneys recommending that there be supervised visitation and the reasons therefor. In that case, the parent who was not recommended to have supervision filed a motion so that the Court could make a determination.

In another matter, the Parenting Coordinator believed that one parent's parenting time should be suspended pending a psychological evaluation of that parent and crisis intervention for the parties' two children. Recognizing that a Parenting Coordinator cannot make a recommendation limiting the parenting time of a parent, the Parenting Coordinator corresponded with the attorneys setting

forth her concerns regarding the well-being of the children, while recommending that the one parent have a psychological evaluation and that the children be offered crisis intervention. Based upon that letter, an Order to Show Cause was filed by the other parent's counsel.

In a another matter, an issue was presented to the Parenting Coordinator as to whether the non-custodial parent should be permitted to have his sons ride on his motorcycle with him. In that case, the mother who was the parent of primary residence feared for her children's safety. After considering the request for a recommendation, the Parenting Coordinator recommended that the father not have his sons as passengers on his motorcycle until they reached the age of majority. The Parenting Coordinator indicated, however, that she recognized that the father had a legal right to have his sons as passengers and stated that as Parenting Coordinator she did not have the authority to deny the father his legal right. The Parenting Coordinator expressed concern that if she recommended that the father be able to have his children on his motorcycle, that mother, despite her valid concerns, would not challenge the Parenting Coordinator's recommendation. The Parenting Coordinator, thus, provided her thoughts and suggested that the father ask the Court for a determination if he did not accept her recommendation.

It is also questionable as to whether a Parenting Coordinator may draft a detailed parenting plan *pendente lite* before there is either a Court Order or a Parenting Agreement. In one such instance, the parties agreed as to who would be the parent of primary residence, but were undecided as to exactly how much time the parent of alternate residence would have with the children. In another similar case, the parties and their attorneys requested the Parenting Coordinator to draft a Custody and Parenting Time Agreement, after assisting the parties in reaching an overall settlement regarding custody and related matters.

It is also questionable as to whether a Parenting Coordinator may draft a consent order regarding accepted recommendations. In one such instance, the Parenting Coordinator made recommendations regarding the non-custodial parent's parenting time with the child upon his relocation to a nearby state. The parties accepted the Parenting Coordinator's recommendations and, after memorializing those recommendations in an email, one parent asked that the Parenting Coordinator set forth the terms in a consent order. In that instance, unsure of her authority to comply with the request, the Parenting Coordinator opined that the Consent Order should be drafted by the attorneys involved in the matter.

In another instance, the parties who had agreed that their children would be raised Jewish did not agree as to whether they would receive their religious education in a Reform Temple or Conservative Temple. The Parenting Coordinator decided to address the question presented, but made sure the parties were aware that they could seek judicial determination.

Role and Responsibilities for Parenting Coordinators

Parenting Coordinators must be active and decisive in their interventions with parents regarding child related issues. This means that the Parenting Coordinator at times must be forceful in order to accomplish necessary behavioral changes in one or both of the parents. Some parents may view this behavior on the part of the Parenting Coordinator as biased, partial or non-objective. However, the Parenting Coordinator must have thick skin and be able to be firm in recommending concrete behaviors and behavioral changes. The Parenting Coordinator deals with current issues only and must be focused on those issues and interactions without exploring issues related to the past, family of origin or symptomatology.¹⁸

¹⁸ Boyan, S. and Termini, A.M., *supra* at 46

According to the AFCC Guidelines (2005), a Parenting Coordinator is not a custody evaluator, a lawyer or a therapist for either of the parties or their children. Although the Parenting Coordinator is not a mediator, Parenting Coordinators use mediation skills. It is important for Parenting Coordinators to mediate parenting concerns in order to reach agreements. If the parents cannot reach an agreement, the Parenting Coordinator will need to make a recommendation if it is within their scope of his or her decision-making authority. If the issue is outside the scope of decision-making authority, the Parenting Coordinator needs to direct the parties to their attorneys.

The specific roles and functions of the Parenting Coordinator as set forth in the AFCC Task Force on Parenting Coordination (2005) and Boyan and Termini are as follows:¹⁹

- A. The Parenting Coordinator serves as an assessment function in the following ways:
- Review custody evaluations, relevant records, interim or final orders, information from interviews with parents and children and other collateral sources;
 - Assess the family's overall functioning;
 - Assess the child's emotional functioning and the emotional impact of parental behaviors on the child;
 - Assess each parent's overall personal intrapsychic functioning;
 - Assess the interpersonal relationship of the parents and their degree of cooperation or conflict;
 - Assess the sources and degree of outside influence, including grandparents, stepparents, siblings and significant others; and

¹⁹ *Id.* at 47-48

- Assess the communication styles and the impasses in reaching consensus and evaluate the need for outside referrals.

B. The Parenting Coordinator serves an educational function in the following ways:

- Educate the parties about child development and children's issues in divorce;
- Educate the parties about divorce research and the impact of parental conflict on their child's development and adjustment to their divorce;
- Identify each parent's contribution to parental conflict and present this to the parties;
- Identify each parent's negative belief about the other parent and explain how this undermines their ability to reach consensus; and
- Teach parents effective communication skills, conflict resolution skills, negotiation skills and anger management skills.

C. The Parenting Coordinator serves in a coordination/case management function as follows:

- Work with and consult with the professionals and systems involved with the family (for example, mental health, healthcare, social services, educational and legal), and the extended family, including stepparents and significant others;
- Record and monitor family progress and compliance;
- Identify the therapy that is needed for family member(s) and make recommendations for educational and therapeutic resources, such as parenting classes, family therapy, supervised visitation, drug and alcohol assessment,

random drug and alcohol screening; Alcoholics Anonymous and anger management classes;

- Assure that there is parental compliance with Court Orders or their agreements;
- Assess and maintain the child's emotional and physical safety;
- Monitor parenting time arrangements and, if and when necessary, alter the arrangements in order to reduce parental conflict;
- Ensure parental access to the children; and
- Enforce appropriate parental conduct.

D. The Parenting Coordinator serves in a decision making function. When parents are unable to decide or resolve disputes on their own, the Parenting Coordinator is authorized to make decisions to the extent described in the Court Order, or to make reports or recommendations to the parties, attorneys and Court for further consideration.

Clarifying the Parenting Coordinator's Role in a Legal Document

Before beginning the parenting coordination process in any particular case, the Parenting Coordinator must have a clear sense as to his or her role and responsibilities. This may be set forth in a Court Order or in the parties' settlement agreement. The Administrative Office of the Courts has a specific form of order appointing a Parenting Coordinator, which the Parenting Coordinator should receive before initiating contact with the parties. In the event a Parenting Coordinator is contacted to serve in that role, it is important to either receive the specific Court Order or to ask the Court to specifically address its expectations in a written form. In the event a Court Order or

settlement agreement is not clear, the Parenting Coordinator has several options as follows:²⁰

1. The Parenting Coordinator may contact both attorneys and ask them to either prepare or revise the Court Order or settlement agreement. Recently, a Parenting Coordinator was appointed in a matter in which there was a final restraining order, in addition to being asked to make recommendations regarding the amount of time the parent of alternate residence would have with the minor child. Recognizing that this was a case in which there was a final restraining order and that there was an evaluation component of the order, the Parenting Coordinator presented the issues to the attorneys, suggesting that they confer with the Court and change the Order of Appointment from that of Parenting Coordinator to that of guardian *ad litem*.

2. If the Parenting Coordinator is ordered by the Court, contact the law clerk and explain the situation if there is a problem with the Court's Order. It is best to try to clarify the role with the law clerk, rather than with the Judge because it may be considered an *ex parte* communication. However, the Judge has discretion to clarify a Court Order with the Parenting Coordinator. In a recent matter, a Parenting Coordinator was appointed with the assignment to make recommendations regarding parenting time for the non-custodial parent after he moved out of state. Because a recommendation under those circumstances would necessarily reduce and significantly change that parent's parenting time, the Parenting Coordinator needed to clarify her role with the Court.

3. Request that the parties contact their attorneys to ask that an Order or agreement be entered by the Court. In one current case, the parties were referred to a Parenting Coordinator in order to help implement a detailed parenting plan. The Parenting Coordinator, before agreeing to undertake the task, provided the clients with a form of order, as set forth by the Administrative

²⁰ Boyan, S. and Termini, A.M., *supra* at 50.

Office of the Courts, to forward to their attorneys for filing with the Court.

Conclusion

Parenting coordination is a valuable program for the Family Part and, indeed, for divorcing parents and their children. However, as the program is no longer formally in effect, questions about decision-making authority will arise. As the use of Parenting Coordinators becomes more widely used, the judicial, legal and mental health systems will need to find effective ways to work collaboratively together.