

2/16/06 DRAFT
SUPREME COURT OF COLORADO
Office of the Chief Justice
DIRECTIVE CONCERNING COURT APPOINTMENTS OF PARENTING
COORDINATORS
Pursuant to C.R.S. 14-10-128.1

I. INTRODUCTION

The objective of parenting coordination is to assist high conflict parents in implementing court orders concerning allocation of parental responsibilities in a timely manner. The use of this role is reserved for those high conflict parents who have demonstrated difficulty in making parenting decisions together, who are unable to comply with court-ordered parenting plans, who cannot or will not reduce their child-related conflicts, and those who are unable to protect their children from the impact of that conflict.

The PC guidelines, set forth in this CJD have been drafted with the knowledge that this role may be filled by people from different professions and backgrounds. They guidelines are intended to provide assistance to parenting coordinators and to provide a structure for regulating conduct in order to better serve the families of Colorado. These guidelines are not intended to exhaust the ethical and professional considerations that should inform parenting coordinators in his or her duties. Violation of a guideline should not in and of itself give rise to a cause of action nor should it create any presumption that a legal duty has been breached or that a professional ethical violation has occurred. These guidelines should be interpreted with reference to the purpose of a parenting coordinator as defined by statute. The comments set forth with each guideline explain and illustrate the meaning and purpose of the guideline, and are intended as a guide to that interpretation.

II. STATUTORY AUTHORITY

A. Section 14-10-128.1, C.R.S. provides for the appointment of a parenting coordinator any time after the entry of an order concerning parental responsibilities. The parenting coordinator shall be an individual with appropriate training, qualifications and a perspective acceptable to the court. The role of the parenting coordinator is to assist the parties in implementing the terms of a parenting plan. Payment of the parenting coordinator's fees shall be apportioned between the parties, and the state shall not be responsible for payment of the fees of a parenting coordinator.

B. The CJD sets forth a comprehensive set of Guidelines for and responsibilities of appointing courts for all parenting coordinators if appointed pursuant to section 14-10-128.1, C.R.S.

III. PARENTING COORDINATOR (PC) GUIDELINES

A. GENERAL PRINCIPLES AND DUTIES

1. Parenting Coordinators shall act professionally.
2. Parenting Coordinators shall maintain objectivity.
3. Parenting Coordinators shall be qualified through education and training and shall maintain competence through appropriate training.
4. Parenting Coordinators shall acknowledge when an issue is beyond his or her competence.
5. Parenting Coordinators shall have no private or ex parte communication with the court.
6. Parenting Coordinators shall review court orders.
7. Parenting Coordinators shall maintain confidentiality.
8. Parenting Coordinators shall not serve dual roles except as authorized by statute.
9. The Parenting Coordinator shall serve as a neutral third party to assist in resolution of disputes between parties, concerning parental responsibilities.

B. GENERAL PRINCIPLES AND DUTIES

**GUIDELINE 1
PARENTING COORDINATORS SHALL ACT PROFESSIONALLY**

PC's shall comply with any chief justice directives and any other practice or ethical Guidelines established by rule, statute, or licensing board that regulates his or her specific profession.

COMMENT

The PC's primary responsibility is to assist parties to resolve disputes concerning parental responsibilities. In meeting this responsibility, PC's should understand that they are working with high conflict families and should attempt to establish a positive and constructive professional working relationship with family members.

PC's should be mindful of the diverse nature of families and respect cultural, individual, and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status and consider these factors when working with a family. They should be sensitive to the separate interests, rights, wishes and concerns of the parents and other parties in a case. They must remember that they are in, and are viewed as being in, a position of great influence over a family's future.

GUIDELINE 2

PARENTING COORDINATORS SHALL MAINTAIN OBJECTIVITY

PC's shall strive to maintain objectivity and independence. If the PC becomes aware of an insurmountable bias or prejudice in dealing with a case s/he shall request the court terminate the appointment with proper notice to the parties.

COMMENT

PC opinions are to be based on their independent evaluation and review of a case. The PC should guard against being unduly influenced by the conclusions of other professionals who are working on or have worked on the case.

A PC should not serve in a matter that presents a clear conflict of interest. The PC should disclose potential conflicts of interest as soon as practical. After appropriate disclosure the PC may continue to serve if the parties agree.

There are times when objectivity is difficult to maintain and the PC, through no fault of his or her own, simply cannot set aside a bias or feelings that occasionally develop when working with challenging parties or high conflict families. When this occurs, the PC should request removal from the case.

GUIDELINE 3

PARENTING COORDINATORS SHALL BE QUALIFIED BY EDUCATION AND TRAINING AND SHALL MAINTAIN COMPETENCE THROUGH APROPRIATE TRAINING

Parenting coordinators shall accept appointments only after attaining a level of competence that includes an understanding of both the legal and psychological/social issues that are typically present in dissolution or parenting cases, and shall maintain and regularly update their training in relevant areas.

New PCs shall complete 40 hours of training in relevant areas prior to accepting appointments. Attorneys and mental health professionals and other members of the community who are working as PC's shall complete no less than 15 hours of continuing education in relevant areas every three years.

COMMENT

PCs achieve competence through some combination of education, specialized training, supervision, consultation, and professional experience. They have a responsibility to develop and maintain a working familiarity with the applicable law and the professional guidelines that govern their duties and participation in legal proceedings. Areas in which PCs should demonstrate experience, education or skills may include the following:

Family mediation/arbitration;

Parenting coordination techniques;
Dynamics of high conflict divorce;
The effects of divorce, single parenting, and remarriage in children, adults, and families;
Family dynamics and dysfunction, domestic violence and substance abuse;
Child development, including cognitive, personality, emotional and psychological development;
Child and adult psychopathology;
Child abuse;
Interviewing techniques;
Available services for the child/ren and parties including medical, mental health, education, and special needs;
Diversity issues; and
The legal Guidelines applicable in each case in which the PC is appointed.

PCs should maintain current accurate records of training and on-going education and provide those records to the court upon request.

GUIDELINE 4
PARENTING COORDINATORS SHALL ACKNOWLEDGE WHEN AN ISSUE
IS BEYOND HIS OR HER COMPETENCE

Parenting coordinators have a duty to recognize and inform the parties and the court when an issue falls outside of his or her training or experience.

COMMENT

When a PC recognizes that an issue falls outside of his or her area of expertise, the parties should be informed and a referral should be made to an appropriate professional. The PC should inform the court and request that the order of appointment be amended.

GUIDELINE 5
PARENTING COORDINATORS SHALL HAVE NO PRIVATE OR *EX PARTE*
COMMUNICATION WITH THE COURT

Parenting coordinators shall have no private or *ex parte* communications with the court.

COMMENT

An *ex parte* communication is any communication in which at least one party does not have notice and an opportunity to participate in the communication.

A PC shall have no contact with the court during the course of his or her appointment except for the following reasons: to obtain information from the court concerning the order of appointment or applicable legal standards, to inform the court of the refusal of a party to participate or to pay, or to report harm or the potential for harm to the child/ren.

GUIDELINE 6
PARENTING COORDINATORS SHALL REVIEW COURT ORDERS UPON APPOINTMENT, THE PARENTING COORDINATOR SHALL REVIEW THE COURT'S ORDER OF APPOINTMENT AND ASK FOR CLARIFICATION OR MODIFICATION OF THE ORDER WHEN NECESSARY

COMMENT

A parenting coordinator must ensure that there is a properly executed court order of appointment prior to providing services. If there is a conflict between the requirements of the order and the Parenting Coordinator's professional ethical constraints or obligations, then s/he should take steps to ensure that the conflict is resolved. If, for example, the order requires the Parenting Coordinator to act beyond the scope of his or her competence, or to perform contradictory multiple roles, then the court and counsel should be informed. If the conflict cannot be resolved, then the Parenting coordinator should request removal from the case.

If the order sets fees and retainer amounts that conflict with the Parenting Coordinator's business practices, s/he should inform the court and request modification of the order or withdrawal from the case. These issues should be addressed immediately upon notice of appointment and before beginning any work on the case.

GUIDELINE 7
PARENTING COORDINATORS SHALL MAINTAIN CONFIDENTIALITY

A. Confidentiality:

In a judicial proceeding, administrative proceeding or other similar proceeding between the parties, a PC may not be required to produce records or to testify as to any statement, conduct, or decision that occurred during the PC's appointment.

B. Exceptions to Confidentiality:

1. A PC may produce records to the extent that such production is necessary in an action by the PC to collect fees from a party to the action.

2. In cases in which the PC suspects or knows that the child/ren are being neglected or abused, the PC shall take the steps required to ensure that the court and law enforcement and/or the department of social services is informed, and shall take whatever additional steps are believed necessary to protect the children.

COMMENT

The PC shall inform the parties of the confidentiality and limitations on confidentiality in the parenting coordination. The PC may not be called to testify in actions between the parties. The underlying notes, records and other materials of a PC shall not be disclosed in any

proceeding except as required by statute. However, the PC should diligently record in writing all agreements of the parties and provide copies to the parties.

The PC shall not share information outside of the parenting coordination process except for legitimate allowable professional purposes. A PC shall maintain confidentiality regarding the sharing of information outside of the scope of the parenting coordination process which is obtained by the PC except as provided by court order or by written agreement of the parties.

The confidentiality requirements and exceptions for the PC are delineated in C.R.S. 14-10-128.1

GUIDELINE 8
THE PARENTING COORDINATOR SHALL NOT SERVE DUAL ROLES EXCEPT AS
AUTHORIZED BY STATUTE

A. The parenting coordinator shall not:

1. Serve or have previously served as a parental responsibility evaluator pursuant to 14-10-127;
2. Serve or have previously served as a legal representative of the child pursuant to 14-10-116;
3. Subsequently serve as a CFI, child's legal representative or parental responsibility evaluator;
4. Provide therapy to any of the parties or children;
5. Accept the appointment if s/he has had a prior personal relationship, or a prior professional role with the family.

B. The PC may have served as the child and family investigator, mediator or med-arbiter. In some cases a CFI (formerly known as special advocate), a mediator or med-arbiter may agree to move to the separate role of parenting coordinator after all of his or her duties as CFI, mediator or med-arbiter are completed and the appointment has been terminated by the court. This move should only occur with the informed consent of both of the parties and the CFI, mediator or med-arbiter. The CFI, mediator or med-arbiter who accepts an appointment as a parenting coordinator shall not be appointed as a CFI, parenting evaluator, mediator, or med-arbiter in the same case in the future.

COMMENT

A PC should avoid multiple relationships which could reasonably be expected to impair objectivity, impartiality, competence or effectiveness. Prior therapeutic relationships, for example, will be compromised, and pre-existing alliances and loyalties that a therapist or attorney or other professional has established will impair objectivity and impartiality.

At the conclusion of the CFI's investigation for the court, and the entry of orders related to the parental responsibility issues before the court, a high conflict family may have ongoing needs for assistance from a third party, or may in the future require assistance related to parenting disputes. Some parties may find that the CFI's prior investigation and familiarity with the family's dynamics could assist them in resolving outstanding or new issues. The familiarity of the mediator or med-arbiter could have the same benefits. A CFI, mediator or med-arbiter may be appointed to the role of parenting coordinator with the agreement of the parties and the professional by a new appointment order clearly outlining the new duties of the parenting coordinator.

GUIDELINE 9
THE PARENTING COORDINATOR SHALL ASSIST THE PARTIES IN
IMPLEMENTING THE TERMS OF A PARENTING PLAN

A parenting coordinator is appointed to help parties implement an already-ordered parenting plan to benefit the child/ren.

COMMENT

The parenting coordinator's duties as set forth in the statute are to assist the parties to create an agreed-upon, structured guideline for implementation of a court-ordered parenting plan; to develop guidelines for communication between the parties and suggest appropriate resources to assist the parties to learn communication skills; to inform the parties about appropriate resources to develop improved parenting skills; to assist the parties to identify sources and causes of conflict; and to assist the parties to develop strategies to minimize conflict.

The issues in, or concerns about, different families will vary from family to family. These Guidelines are not intended to limit the flexibility available to the parties and the parenting coordinator. For example, the parenting coordinator might provide information to the parties through high conflict parenting classes. S/he might also assist a family by providing information to the parents about their child/ren's wishes and needs or about better communication techniques. The parenting coordinator can help de-escalate conflict and assist the parties to refocus on the needs of their child/ren. However, the PC has no decision-making authority unless also appointed a DM or Arbitrator.

IV. COURT'S AUTHORITY, ROLE AND RESPONSIBILITIES RELATED TO PARENTING COORDINATORS APPOINTED PURSUANT TO 14-10-128.1

- A. The court shall ensure compliance with the parenting coordinator guidelines.
- B. The court shall not appoint a parenting coordinator until it makes the findings required by 14-10-128.1(2)(a).
- C. The court shall allocate the costs for parenting coordinator services and enforce its payment orders.
- D. The court shall establish the term of the parenting coordinator appointments.
- E. The court shall not appoint parenting coordinators to inconsistent dual roles.

A. THE COURT SHALL ENSURE COMPLIANCE WITH THE PARENTING COORDINATOR.

The court shall appoint qualified parenting coordinators and shall monitor any complaints concerning that person's services.

COMMENT

Parties and children deserve to have parental responsibility proceedings conducted in the manner least harmful to them and most likely to provide assistance to the family to implement existing orders. It is the court's responsibility to ensure that the PC is qualified and to monitor compliance with this Chief Justice Directive. If issues are raised concerning competency or any other concerns, the court should inquire and provide an opportunity to remedy any unethical or inappropriate conduct or to approve the PC actions. (Should parties be directed in the court order to first complain to the judge before complaining to licensing board, etc.?)

B. THE COURT SHALL NOT APPOINT A PARENTING COORDINATOR UNTIL IT MAKES THE FINDINGS REQUIRED BY 14-10-128.1(2)(a).

Absent agreement of the parties to a parenting coordinator, the Court shall only appoint a parenting coordinator after specific findings.

COMMENT

The court shall define the subject matter and scope of the PC appointment in an order in substantial compliance with Attachment A to this Chief Justice Directive. The court should provide guidance and a clear statement of its expectations in the order of appointment.

C. THE COURT SHALL ALLOCATE THE COSTS FOR PARENTING COORDINATOR SERVICES AND ENFORCE ITS PAYMENT ORDERS

The court order appointing a PC shall include apportionment between the parties of the responsibility for payment of all fees. The state shall not be responsible for the payment of any PC or DM fees. The court shall enforce its orders for payment by all available means. Parenting coordinators are entitled to receive adequate and predictable compensation.

COMMENT

Section 14-10-128,.1(6), C.R.S. requires the court to enter an order for costs, fees and disbursements for PCs appointed by the court. Those costs shall be apportioned between the parties, and shall never be paid by the state.

It is the responsibility of the court to enforce its orders concerning payment of PCs through its contempt power. When non-payment or partial payment issues arise, the PC may notify the court regarding the non-payment issue and ask for guidance. The court, at its

discretion, should determine what course of action is appropriate, including continuing court dates, finding parties in contempt, or reallocating the parties' division of fees. Because the PC is performing valuable duties for the court under the court's order, the court is responsible for ultimately overseeing and ensuring compliance with its appointment and fee order.

D. THE COURT SHALL ESTABLISH THE TERMS OF THE PARENTING COORDINATOR APPOINTMENTS

The court shall appoint PC's for specified terms not to exceed two years, and the Court shall terminate the PC appointment at the end of the term, unless all parties and the PC agree to continue the term.

COMMENT

See the Comment under III.A. Guideline 9. *DO WE WANT THIS IN HERE/ DOESN'T THE COURT HAVE THE AUTHORITY TO APPOINT A DIFFERENT PC IF THE PC WITHDRAWS EITHER BEFORE OR AT THE END OF THE TERM?*

E. THE COURT SHALL NOT APPOINT PARENTING COORDINATORS TO INCONSISTENT DUAL ROLES

The court shall not appoint parenting coordinators to serve in dual roles which are inconsistent and create conflicts.

COMMENT

See the Comment under Guideline 8.