



## CONCERNING COURT APPOINTMENTS OF PARENTING COORDINATORS: A Resource for Courts and Professionals

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### 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. As provided by statute, a court shall not appoint a parenting coordinator (“PC”) unless the parties have: 1) failed to implement the parenting plan; 2) mediation is inappropriate; and 3) appointment of the PC is in the best interest of the child. 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.

14-10-128.1, C.R.S. defines the duties and responsibilities of a PC. These guidelines are not intended to exhaust the ethical and professional considerations that should guide a PC 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. The PC guidelines have been drafted with the knowledge that this role may be filled by people from different professions and backgrounds. The purpose of these guidelines is to provide guidance to PCs, to the courts that are appointing PCs, and to the parties who are appointed PCs as to the responsibilities of each when such an appointment is made in an order. 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

Section 14-10-128.1, C.R.S. provides for the appointment of a PC any time after the entry of an order concerning parental responsibilities. The PC shall be an individual with appropriate training, qualifications and a perspective acceptable to the court. The role of the PC is to assist the parties in implementing the terms of a parenting plan. Payment of the PC’s fees shall be apportioned between the parties.

### III. PARENTING COORDINATOR (“PC”) GUIDELINES

#### A. GENERAL PRINCIPLES AND DUTIES

1. The PC shall observe all applicable statutory duties and act professionally.
2. The PC shall maintain neutrality.
3. The PC shall be qualified through education and training and shall maintain competence through appropriate training.
4. The PC shall acknowledge when an issue is beyond his or her competence.
5. The PC shall have no private or *ex parte* communication with the court.
6. The PC shall review the court’s order of appointment and ask for clarification or modification of the order when necessary.

7. The PC shall maintain confidentiality.
8. The PC shall not serve dual roles except as authorized by statute.
9. The PC shall develop written policies for the parties.

## **B. GENERAL PRINCIPLES AND DUTIES**

### **GUIDELINE 1 THE PC SHALL OBSERVE ALL APPLICABLE STATUTORY DUTIES AND ACT PROFESSIONALLY**

A PC is appointed to help parties implement an already-ordered parenting plan to benefit the child/ren. In doing so, the PC 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 primary responsibility of the PC is to assist parties to resolve disputes concerning parental responsibilities. The PC's statutory duties 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 or the PC. For example, the PC 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 more effective communication techniques. The PC can help de-escalate conflict and assist the parties to refocus on the needs of their child/ren. However, the PC has no statutory authority to make decisions unless also appointed a Decision-Maker ("DM") or Arbitrator, nor does the PC have statutory authority to serve as a witness in a case. See Guidelines 7 and 8 for additional guidance on roles.

In meeting these responsibilities, PCs should also understand that they are working with high conflict families and should attempt to establish a positive and constructive professional working relationship with family members. PCs 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. The PC should inform parties that Parenting Coordination is distinct and separate from other forms of alternative dispute resolution, from forensic services such as parental responsibility evaluations or child and family investigations and from the

practice of law. An attorney serving as a PC shall not provide legal advice or otherwise act as an attorney on the case.

**GUIDELINE 2  
THE PC SHALL MAINTAIN NEUTRALITY**

The PC shall strive to maintain neutrality 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 assessment of the family and their needs. 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, bias or prejudice. 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 neutrality 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  
THE PC SHALL BE QUALIFIED BY EDUCATION AND TRAINING AND  
SHALL MAINTAIN COMPETENCE THROUGH APROPRIATE TRAINING**

PCs 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.

PCs shall have substantial training in relevant areas. New PCs shall complete 60 hours of training in relevant areas prior to accepting appointments. Mediation training is required before appointment. Attorneys and mental health professionals and other members of the community who are working as PCs 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 an understanding of 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:

- 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;
- Substance abuse;
- Domestic violence;
- 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 statutory requirements 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**  
**THE PC SHALL ACKNOWLEDGE WHEN AN ISSUE IS BEYOND HIS OR HER**  
**COMPETENCE**

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

**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. They should inform the court and request that the order of appointment be amended.

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

PCs 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 or to inform the court of the refusal of a party to participate or to pay.

#### **GUIDELINE 6**

#### **THE PC SHALL REVIEW THE COURT'S ORDER OF APPOINTMENT AND ASK FOR CLARIFICATION OR MODIFICATION OF THE ORDER WHEN NECESSARY**

#### **COMMENT**

A PC 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 PC'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 PC to act beyond the scope of his or her competence or statutory authority, or to perform contradictory multiple roles, then the court and counsel should be informed. If the conflict cannot be resolved, then the PC should request removal from the case.

If the order sets fees and retainer amounts that conflict with the PC'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**

#### **THE PC SHALL MAINTAIN CONFIDENTIALITY**

##### **A. Confidentiality:**

As provided by 14-10-128.1, C.R.S., in a judicial proceeding, administrative proceeding or other similar proceeding between the parties, a PC shall not be required to produce records or testify.

##### **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 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 shall 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. If there is a intent to commit a felony, inflict bodily harm, or threaten the safety of a child under 18 years, the PC should notify the proper agencies.

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 PC SHALL NOT SERVE DUAL ROLES EXCEPT**  
**AS AUTHORIZED BY STATUTE**

**A. The PC 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 except as provided in (B) below.
6. Act as a DM absent informed consent and written agreement of the parties, incorporated in a court order.

**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 PC 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 PC shall not be appointed as a CFI, parenting evaluator, mediator, or med-arbiter in the same case in the future.

If the PC is unable to facilitate an agreement between the parties to implement the court-ordered parenting plan, and the parties do not consent to the PC acting as a DM, the PC shall notify the court and counsel/parties and await further direction from the court.

## **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 PC with the agreement of the parties and the professional by a new appointment order clearly outlining the new duties of the PC. A PC may transition to the role of DM with informed consent and written agreement of the parties, incorporated as a court order.

## **GUIDELINE 9 THE PC SHALL DEVELOP WRITTEN POLICIES FOR THE PARTIES**

The PC shall develop written information about his or her policies and procedures. The information shall include the nature of the services provided, the PC's qualifications, where complaints should be directed, fees and billing procedures, how communication will be handled, how sensitive information will be handled, and the PC's reporting obligations.

## **COMMENT**

When first appointed, a PC should provide the parties with written information that clarifies, along with the court's appointment order, the nature and scope of the services to be provided and the confidentiality of PC work. The initial information should describe the PC's policies, procedures, qualifications, and reporting obligations, as well as how to proceed should a concern or complaint about the PC arise. The PC's billing statements should list all services performed and detail the time spent and the charges incurred.

## **IV. COURT'S AUTHORITY, ROLE AND RESPONSIBILITIES RELATED TO PCS APPOINTED PURSUANT TO 14-10-128.1**

- A. The court shall ensure compliance with 14-10-128.1.
- B. The court shall allocate the costs for PC services and enforce its payment orders.
- C. The court shall establish the term of the PC appointments.
- D. The court shall not appoint PCs to inconsistent dual roles.

**A. THE COURT SHALL ENSURE COMPLIANCE WITH THE PC STATUTE**

When the conditions of 14-10-128.1(2)(a), C.R.S. are met, the court shall appoint a qualified PC to assist with implementation of the court-ordered parenting plan. The court shall monitor any complaints concerning that person's services.

**COMMENT**

Parties and children deserve to have parenting coordination services conducted in the manner least harmful to them and most likely to provide assistance to the family to implement existing orders. 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.

The court shall define the subject matter, scope and term of the PC appointment in an order. The court should provide guidance and a clear statement of its expectations in the order of appointment. The court's instructions should make clear to the PC and parties that no decision-making authority exists and that the PC has no authority to change, modify or abridge court orders.

**B. THE COURT SHALL ALLOCATE THE COSTS FOR PC SERVICES AND ENFORCE ITS PAYMENT ORDERS**

The court order shall set forth the scope of service and term of the PC's appointment. If required by circumstances unforeseen at the time of appointment, the PC and/or parties can return to the court to request expansion of the order of appointment. 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. PCs 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 to be apportioned between the parties.

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 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.



**C. THE COURT SHALL ESTABLISH THE TERMS OF THE PC's APPOINTMENT**

The court shall appoint PCs 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 and notify the court accordingly.

**COMMENT**

See the Comment under IV.A.

**D. THE COURT SHALL NOT APPOINT PCS TO INCONSISTENT DUAL ROLES**

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

**COMMENT**

See the Comment under Guideline 8.