

## PROPOSED RULES

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### AMENDMENTS TO THE RULES OF CIVIL PROCEDURE RELATING TO DOMESTIC RELATIONS MATTERS

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#### SUPREME COURT OF PENNSYLVANIA DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

#### RECOMMENDATION 104

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than **Friday, February 11, 2011** directed to:

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Deleted material is **bold** and **[bracketed]**. New material is **bold** and underlined.

*By the Domestic Relations Procedural Rules Committee*

Carol A. Behers, Esquire  
*Chair*

**SUPREME COURT OF PENNSYLVANIA**

**DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

**RECOMMENDATION 104**

**Rule 1915.11-1. Parenting Coordinators.**

**(a) Appointment of a Parenting Coordinator. At any time after a custody order has been entered following a hearing or by consent of the parties, a judge may, in cases involving repeated or intractable conflict between the parties affecting implementation of the custody order, appoint a parenting coordinator to resolve parenting issues. The appointment may be made on the motion of either party or on the court's own motion. No parenting coordinator shall be appointed in cases in which a protection from abuse order is in effect.**

**(b) Qualifications of the Parenting Coordinator.**

**(1) The parenting coordinator shall be a licensed attorney who has practiced family law for at least the last five years.**

**(2) To be appointed as a parenting coordinator, the attorney also must have the following qualifications:**

**(i) A minimum of 20 hours training in the parenting coordination process.**

**(ii) A minimum of 40 hours of family mediation training.**

**(iii) A minimum of four hours of training in the dynamics of domestic violence.**

**(3) To maintain eligibility to serve as a parenting coordinator, the parenting coordinator shall complete a minimum of 10 continuing education credits in any topic related to parenting coordination in each two-year period after initial appointment.**

**(4) The court may maintain a roster of individuals who meet the qualifications set forth in this rule and may establish grievance procedures if it deems them appropriate.**

**(c) Appointment Order.**

**(1) The parenting coordinator's authority shall be set forth in the order appointing the parenting coordinator, which shall be substantially in the form set forth at Rule 1915.20.**

**(2) A parenting coordinator should not be appointed in every case. Only a judge may appoint a parenting coordinator. No parenting coordinator shall be appointed prior to the entry of a custody order entered after hearing or by consent of the parties.**

**(3) At the expiration of an order appointing a parenting coordinator, either party may file a motion for renewal of the parenting coordinator order or the court may do so on the court's own motion.**

**(d) Role of the Parenting Coordinator.**

**(1) The parenting coordinator shall attempt to resolve issues arising out of the custody order by facilitating an agreement between the parties.**

**(2) If the parties are unable to resolve an issue, the parenting coordinator is authorized to decide the issue.**

**(e) Authority of the Parenting Coordinator. The parenting coordinator shall have the authority to decide issues ancillary to the final custody order. The following specific issues are excluded from the parenting coordinator's decision-making authority:**

**(1) A change in legal custody.**

**(2) A change in primary physical custody.**

**(3) A change in the court-ordered custody schedule that substantially reduces or expands a child's time with one or both parties.**

**(4) A change in the geographic residence of the child.**

**(5) Major decisions regarding the health, education, religion or welfare of the child.**

**The parties may mutually agree in writing to submit any of the excluded issues set forth above to the parenting coordinator for facilitation and recommendation, but any recommendation shall become binding only upon the written agreement of the parties.**

**(f) Communications. No Testimony.**

**(1) The parties and their attorneys shall have the right to receive, but not to initiate, oral ex-parte communications from the parenting coordinator, but the parenting coordinator promptly shall advise the other party or the other party's attorney of the communication. Any party or any party's attorney may communicate in writing with the parenting coordinator, but he or she must contemporaneously send a copy of the written communication to the other party or the other party's attorney. Any documents, recordings or other material that one party gives to the parenting coordinator must promptly be made available to the other party or the other party's attorney for inspection and copying. Communications between the parties and/or their attorneys and the parenting coordinator are not confidential.**

**(2) The parenting coordinator may initiate written communication with the appointing judge in the event that a party fails to comply with any provision of the appointment order and he or she must contemporaneously send a copy of the written communication to both parties or their attorneys.**

**(3) If the parenting coordinator seeks to withdraw from service in a case, the parenting coordinator shall obtain leave of court.**

**(4) Absent an emergency affecting the child's health or welfare, any communication from the parenting coordinator to the court shall be in writing and the parenting coordinator shall contemporaneously send copies to the attorneys for both parties, or to any unrepresented party. If the parenting coordinator has communicated orally with the court on an emergency basis, the parenting coordinator promptly shall communicate in writing to the attorneys for both parties, or to any unrepresented party, the substance of the oral communication.**

**(5) Neither party can compel the testimony of a parenting coordinator without an order of court.**

**(g) Decisions. De Novo Review.**

**(1) The parenting coordinator's decisions may be communicated to the parties orally, but shall be provided in writing and filed of record at the parties' custody docket not later than 10 days after the decision is rendered.**

**(2) Decisions made by the parenting coordinator shall be binding upon the parties pending further order of court.**

(3) A party seeking judicial review of the parenting coordinator's decision shall file a petition for a de novo hearing before the court within 20 days of the mailing of the parenting coordinator's written decision. The petition must specifically state the issues to be reviewed and a copy of the decision must be attached. The petition must be served upon the other party, or the other party's attorney if represented, and the parenting coordinator, in accordance with Pa.R.C.P. 440. If neither party seeks judicial review within the 20-day period, the parenting coordinator's decision shall be final and non-appealable.

(4) The court shall hear the matter on the record as soon as practicable and review shall be de novo. The court shall render a decision within the time set forth in Rule 1915.4(d).

(h) Fees. In considering whether to appoint a parenting coordinator, the court shall consider the financial circumstances of the parties.

(1) The costs of the parenting coordinator shall be allocated between the parties by the appointing judge. The parenting coordinator may reallocate the costs if one party has caused a disproportionate need for the services of the parenting coordinator, subject to de novo review by the court.

(2) In order to limit the financial burden on the parties, a parenting coordinator should meet and consult with the parties only upon the request of either party to try to resolve an issue about which the parties disagree.

#### Explanatory Comment--2011

Following the entry of a final custody order, the parties in some cases experience repeated or intractable conflict. These cases involve repetitive filings and litigation that detrimentally affect the children and disproportionately consume limited judicial resources.

Parenting coordination can be an effective tool to prevent escalation of conflict between the parties. The parenting coordinator's role is to attempt to achieve an agreed resolution of disputes between the parties. Failing that, the parenting coordinator is authorized to make decisions regarding issues ancillary to a custody order, subject to de novo review by the court.

Parenting coordinators should not be appointed in every case. Appointment is appropriate only in cases in which the court finds that there is high conflict between the parties. Only a judge may appoint parenting coordinators. Hearing officers, masters, conciliators or other pre-trial professionals shall not make the appointment. No parenting coordinator should be appointed prior to the entry of a custody order entered after hearing or by consent of the parties.

Parenting coordinators are not authorized to make major decisions. For example, a parenting coordinator should not decide if a child should change schools, but may decide if the child should participate in an after-school activity.

The rule does not anticipate that the parties will have regular meetings or other interaction with the parenting coordinator when there are no issues of conflict between the parties. The parenting coordinator should not assume the role of a therapist, attorney or advocate. The parenting coordinator is a resource for the parties to call upon only when they are unable to agree on an issue related to a custody order.

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Rule 1915.20. Form of Order Appointing Parenting Coordinator.

The order appointing a parenting coordinator pursuant to Rule 1915.11-1 shall be in substantially the following form:

(Caption)

ORDER OF COURT

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, it is hereby ordered as follows:

1. APPOINTMENT AND TERM:

Pursuant to Pa.R.C.P. 1915.11-1, \_\_\_\_\_ is appointed as the parties' parenting coordinator for a term of [ ] months, or until further order of court.

Legal counsel for \_\_\_\_\_, or either party, if unrepresented, shall provide copies of all orders, pleadings and custody evaluations in this case to the parenting coordinator within ten (10) days of the date of this order.

2. ROLE OF THE PARENTING COORDINATOR:

(a) The parenting coordinator shall attempt to resolve issues arising out of the custody order by facilitating an agreement between the parties.

(b) If the parties are unable to resolve an issue, the parenting coordinator is authorized to decide the issue.

(c) The parenting coordinator shall not function as the attorney or advocate, counselor or psychotherapist for the parties or the parties' children or family. However, the parenting coordinator is permitted and encouraged to facilitate communication and agreement between the parties when conflicts arise and shall always act in a manner conducive to the best interests of the child.

### 3. PARENTING COORDINATOR'S AUTHORITY:

The parenting coordinator, in order to implement the custodial arrangement set forth in the custody order and resolve related parenting issues about which the parties cannot agree, is authorized to make decisions about issues that may include, but are not limited to, the following:

(a) Dates, times, places and conditions for transitions between households;

(b) Temporary variation from the schedule for a special event or particular circumstance;

(c) School issues, apart from school selection;

(d) A child's participation in recreation, enrichment, and extracurricular activities, programs and travel;

(e) Child-care arrangements;

(f) Clothing, equipment, toys and personal possessions of the child;

(g) Information exchanges (school, health, social, etc.) and communication with or about the child;

(h) Coordination of existing or court-ordered services for a child (e.g. psychological testing, alcohol or drug monitoring / testing, psychotherapy, anger management, etc.);

(i) Other related custody issues that the parties mutually agree, in writing, to submit to their parenting coordinator.

### 4. EXCLUSIONS FROM PARENTING COORDINATOR'S AUTHORITY:

(a) The following specific issues are excluded from the parenting coordinator's role and decision-making authority, except as provided in subparagraph 4(B):

(1) A change in legal custody decision-making authority set forth in the custody order;

(2) A change in primary physical custody set forth in the custody order;

(3) A change in the court-ordered custody schedule that reduces or expands any child's time with one or both parties;

(4) A change in the residence of any child (relocation) that would render implementation of the current custody order impossible or impracticable;

(5) Determination of financial issues, other than allocation of the parenting coordinator's fees as set forth in Pa.R.C.P 1915.11-1(h)(1);

(6) Other:

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(b) The parties may mutually agree in writing, to submit any of the excluded issues set forth above to the parenting coordinator for facilitation and recommendation, but not decision, which recommendation shall become binding only upon the written agreement of the parties.

## 5. COMMUNICATIONS:

(a) The parenting coordinator shall determine the protocol of all communications, interviews, and sessions, including who shall or may attend the sessions (including the children), and whether the sessions will be conducted in person or by other means. Where domestic violence or abuse, as defined under 23 Pa.C.S. § 6102, is alleged, the protocols should include measures addressing the safety of all participants, unless the court deems the measures unnecessary.

(b) No communications between the parties or their lawyers and the parenting coordinator are confidential.

(c) The parties and their attorneys shall have the right to receive, but not to initiate, oral ex-parte communications from the parenting coordinator, but the parenting coordinator promptly shall advise the other party or the other party's attorney of the communication. Any party or any party's attorney may communicate in writing with the parenting coordinator, but he or she must contemporaneously send a copy of the written communication to the other party or the other party's attorney. Any documents, recordings or other material that one party gives to the parenting coordinator must promptly be made available to the other party or the other party's attorney for inspection and copying.



(d) The parenting coordinator may initiate written communication with the appointing judge in the event that a party fails to comply with any provision of the appointment order and he or she must contemporaneously send a copy of the written communication to both parties or their attorneys.

(e) If the parenting coordinator seeks to withdraw from service in a case, the parenting coordinator shall obtain leave of court.

(d) Absent an emergency affecting the child's health or welfare, any communication from the parenting coordinator to the court shall be in writing and the parenting coordinator shall contemporaneously send copies to the attorneys for both parties, or to any unrepresented party. If the parenting coordinator has communicated orally with the court on an emergency basis, the parenting coordinator promptly shall communicate in writing to the attorneys for both parties, or to any unrepresented party, the substance of the oral communication.

(e) Neither party can compel the testimony of a parenting coordinator without an order of court.

#### 6. SOURCES OF INFORMATION:

The parenting coordinator is authorized to contact any professional or other individual as the parenting coordinator deems necessary (e.g. the children, therapists, physicians, childcare providers, teachers, family members, etc.) to resolve any issue about which the parties are unable to agree.

#### 7. PARENTING COORDINATION DECISION-MAKING PROCESS:

(a) Prior to the parenting coordinator making a decision, the parenting coordinator shall provide notice and an opportunity for each of the parties to be heard, unless exigent circumstances render contact with both parties impracticable or potentially dangerous to a party and/or any child. In the event that a party is given advance written notice of a scheduled meeting between the parties and the parenting coordinator, but that party does not attend, the parenting coordinator may make a decision despite that party's absence.

(b) The parenting coordinator's decisions may be communicated to the parties orally, but shall be provided in writing and filed of record at the parties' custody docket not later than 10 days after the decision is rendered.

(c) Decisions made by the parenting coordinator shall be binding upon the parties pending further order of court.

**8. JUDICIAL REVIEW:**

**(a) A party seeking judicial review of the parenting coordinator's decision shall file a petition for a de novo hearing before the court within 20 days of the mailing of the parenting coordinator's written decision. The petition must specifically state the issues to be reviewed and a copy of the decision must be attached. The petition must be served upon the other party, or the other party's attorney if represented, and the parenting coordinator, in accordance with Pa.R.C.P. 440. If neither party seeks judicial review within the 20-day period, the parenting coordinator's decision shall be final and non-appealable.**

**(b) The court shall hear the matter on the record as soon as practicable and review shall be de novo. The court shall render a decision within the time set forth in Rule 1915.4(d).**

**9. SUBSEQUENT COURT PROCEEDINGS:**

**Prior to filing any new motion, petition or complaint with the court involving matters within the scope of the parenting coordinator's authority, the parties shall participate in a minimum of one session with the parenting coordinator to attempt resolution of the disputed issue and, if the parties are unable to agree, to permit the parenting coordinator to make a decision.**

**10. CHILD ABUSE REPORTING:**

**The parenting coordinator is a person required to report suspected child abuse pursuant to 23 Pa. C.S. §6311.**

**11. ALLOCATION OF FEES:**

**The parties will share the obligation to pay the fees of the parenting coordinator as follows:    % Mother,    % Father. Fees may be reallocated by the court or the parenting coordinator if he or she determines that one party has disproportionately caused the need for the services of the parenting coordinator.**

**12. TERMINATION / WITHDRAWAL OF PARENTING COORDINATOR:**

**(a) The parties may not terminate the parenting coordinator's services without court approval.**

**(b) If the parenting coordinator seeks to withdraw from service in a case, the parenting coordinator shall obtain leave of court.**

**(c) A party seeking the termination of the parenting coordinator shall serve the other party and parenting coordinator with a copy of the petition for termination. The court may rule on the petition submitted, or may schedule argument or an evidentiary hearing.**

**BY THE COURT:**

\_\_\_\_\_  
\_\_\_\_\_ J.