

PARENTING PLAN COORDINATION: A HYBRID ROLE FOR ALTERNATIVE DISPUTE RESOLUTION IN FAMILY LAW



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In 2008, the Family Law Executive Committee of the Los Angeles County Bar Association produced a new stipulation for the appointment of a “Parenting Plan Coordinator” (PPC). This carefully-crafted document was the result of a year of discussion among members of a committee appointed by the bar and the court. It was composed of family law attorneys, judicial officers and mental health professionals, with the intention of revising a document that had been previously developed in 1995. In developing the new document, we pored over other States’ and Counties’ documents as well as the AFCC 2005 guidelines. Mary Lund and I, as the mental health professionals who had the experience of working as PPCs, defined issues for debate and provided information about the challenges and potential pitfalls of the process, while the judicial officers and the attorneys

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defined how they needed to interact with the PPCs and hashed through the legal issues. In the end, I was proud of our finished product, a document that noted Parenting Coordinator trainer Matt Sullivan described as the “best conceived” stipulation of all those he has reviewed across the country.

What Clients Are Suitable for the PPC Process?

There are a variety of reasons clients choose to use this process. A frequent reason is that clients, emotionally and physically exhausted by litigation, are searching for an alternative method of resolving the myriad issues involved in co-parenting. One or both parties may be seen by their partner or third parties as “difficult,” “obsessive,” “hostile,” “suspicious,” “always changing their mind,” “always immovable,” “borderline,” or “high-conflict.” They find themselves unable to negotiate and want some kind of third-party decision-maker for ongoing disputes.

Another reason that clients choose this process is that they appear to be simply seeking an alternative method of resolving disputes. At times, clients have approached me to be a PPC, recognizing that they have problems but that they are unwilling to resolve them in a court of law due to a dislike of the litigation process. Instead, their preference is the help of a mental health professional with experience in family law disputes. Some clients value their privacy (e.g. celebrity clients), or distrust the legal system (e.g. gay or lesbian couples). Some have tried to negotiate, either by themselves or with a mediator, but keep hitting a brick wall, eventually recognizing their need

for a “decider” on issues ranging from the small – “How should we manage back-to-school night?” or “What do we do with the forgotten schoolbook?” – to the large – “How shall we decide how to treat our child’s allergies?” or “What school should she go to?”

What’s in the Stipulation?

The stipulation is divided into various sections describing:

- The role of the PPC
- The parents’ understanding of the terms of their agreement
- The order of appointment by the court
- The limits of the PPC’s authority
- The definition of the three levels of decisions
- The definition of the specific scope of decisions
- The process of decision-making
- Issues of ex parte communication with the court
- Issues of privilege, privacy and confidentiality
- Compensation of the PPC
- Deposition and court appearance procedures
- Grievances, disqualification and termination of appointment

What Is the Legal Basis of the Stipulation?

The committee debated long and hard about whether or not to include code references. In the end we decided against it, concluding that the process is by stipulation and hence does not need to reference codes. The hybrid process has elements of various other processes, but not all the elements required by code for that process: thus, Parent Plan Coordination is not mediation under Fam. Code 3160

because it is not confidential and does have decision-making power; it is not refereeing under Code of Civil Procedure 638 and 639 because it includes decision-making about unknown future disputes; it is not a custody evaluation under Evidence Code section 730 because there is decision-making and not just recommendations; and it is not arbitration under Code of Civil Procedure section 1280 et seq., although close, because the rules of evidence procedures are less formal.

Why Call the Role ‘Parenting Plan Coordinator’?

This term, we believe, best describes the role. Previously, the more ambiguous term “Special Master” was used, one we thought was not particularly descriptive and even somewhat misleading, as Special Masters are usually attorneys, who are officers of the court, and PPCs are more often mental health professionals. Nationally, the most widely used term today is “Parenting Coordinator,” but we instead settled on the term “Parenting Plan Coordinator” to emphasize that the role is not so much about parenting *in general* as it is about making decisions about the “Parenting Plan,” stressing decision-making at the macro rather than micro level.

What Are the Three Levels of Decision-making?

Each level has increasing scope and decreasing immediacy of authority. Level 1 decisions are usually short-term, practical, and time-sensitive. Examples include changes in drop-off location, scheduling for Holidays and vacations and selecting extra-curricular activities. These decisions take place immediately and are only challengeable by bringing an OSC within 30 days and proving “by clear and convincing evidence” that the decision was not in the best interest of the child.

Level 2 decisions are less immediate but have longer-term ramifications and a broader scope. Examples here include choice of and interaction with doctors, special needs providers, choice of school and travel issues. These decisions take place immediately and are only challengeable by bringing an OSC within 30 days and proving “by a preponderance of the evidence” that the decision was not in the best interest of the child.

Level 3 decisions are the broadest in scope and involve more fundamental changes in the role of each parent. Examples of Level 3 decisions are: the assignment of legal custody, large changes in the base parenting schedule, the implementation of monitored supervision, or counseling of the parties or the children. These decisions are not “orders” but, rather, “recommendations” to the court. They are only enforceable by either stipulation of the parties or a court decision triggered by one party bringing an OSC to the court. It should be noted that these sorts of “recommendations” do not hold the same force as custody evaluation “recommendations”: custody evaluation recommendations are made as part of a report that is usually entered into evidence and which is considered expert opinion; PPC recommendations are neither and, unless the parties stipulate to adopt the PPC recommendations, are subject to a *de novo* hearing.

Some counties in California differentiate between a Parenting Coordinator, who handles issues at level 1 and 2, and a Special Master, who handles only level 3 issues. Our approach combines the roles by having some decisions that are orders and some that are recommendations.

Why Have a Notice of Decision Form?

A simple but practical feature of our stipulation was the creation of the form PPC-2, “The Notice of Decision” (see end of article). This form is the cover sheet preceding the PPC’s description of the issue, decision, rationale and date that a decision was made. The purposes of the form are two-fold: to improve communication between the PPC and the court; and to make it easy for the clerk and the court to provide conformed copies of decisions. We use lavender-colored paper to make the form stand out.

How Can Attorneys Participate Most Helpfully?

Attorneys are vital in helping to set up the case. They can help guide their clients to understand the implications of what they are agreeing to and assist them in negotiating the scope of the appointment. Remember, the PPC

stipulation is a voluntary agreement – the standard stipulation is only a guideline. Having said that, we ask that any changes be clearly marked in handwriting or put in an appendix so that those involved – especially judicial officers – can easily see what modifications have been made from the standard template.

In another role, counsel can assist their clients in presenting issues to the PPC for consideration. A problem with this more informal process of dispute resolution is that clients are often very unclear about what issue they want decided and what they propose as solutions. Attorneys can help their clients present reasonable solutions and draft orders. This is especially useful if the PPC is a mental health professional, because they have little training in drafting orders.

Finally, attorneys can perform a valuable service by keeping PPCs in line when they stray from their scope or do not fairly follow the process. They can also nudge the PPC to make timely decisions and help their clients be realistic about decision-making.

In conclusion, the LA County Bar Association Family Law Section committee has endeavored to provide a newly refined process to help parents more quickly come to decisions with less angst and fewer uses of professional resources, all to the ultimate benefit of the children. In these harsh financial times, my hope is that the process will also take some pressure off our already-stretched courts.

In closing, I would like to thank the other members of the Los Angeles County Bar Association Family Law Committee which included Judge Robert A. Schnider (Ret.), Judge Thomas Trent Lewis, Commissioner Richard Curtis (Ret.), and Commissioner Alan Friedenthal, psychologists Mary Lund, Ph.D., and myself, and attorneys Jeffrey Jacobson, Heidi Tuffas, Leslie Shear and Lynette Berg Robe. The drafting committee was composed of myself, Commissioner Curtis and attorney Leslie Shear.

The stipulation is available at http://www.lundstrachan.com/forms/PPC_1_Stipulation_08.pdf.

The Notice of Decision is available at http://www.lundstrachan.com/forms/PPC2_notice_of_decision_08.pdf. ■