

Parenting Plan Coordinators—Los Angeles County Family Law Section Revises Its Stipulation

Mary Lund, Lynette Berg Robe, Judge Robert A. Schnider, and Angus Strachan*

Introduction

Lynette Berg Robe

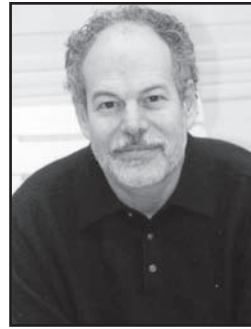
Parenting Plan Coordinators (“PPCs”) have become more common since the concept was first introduced in the early 1990’s. In 2007-2008, the Los Angeles County Family Law Executive Committee of the Los Angeles County Bar Association appointed a multi-disciplinary committee to revise the Parenting Plan Coordinator Stipulation that had been in use since about 1995.

Los Angeles County has one of the largest family courts in North America, and the court actively promotes alternative dispute resolution procedures. Besides the required Conciliation Court mediations for child custody, there is a large volunteer panel of family law attorneys and accountants who provide mediation services. In the spring of 2007, the court sponsored a training program for Parenting Plan Coordinators, conducted by Matthew J. Sullivan, Ph.D., in order to create awareness of the process and to provide training for new Parenting Plan Coordinators.

The revised stipulation was developed as a standard template for use throughout the courts in the county. The interdisciplinary panel consisted of judicial officers, attorneys and mental health professionals.¹ The revised stipulation created procedures for filing PPC orders and recommendations with the court and sought to address difficulties in parenting plan coordination that have emerged during the prior decade. Too lengthy to be reproduced in this article, the Los Angeles County stipulation may be accessed at www.calbar.ca.gov/calbar/pdfs/sections/fam-law/stipulation.pdf.

Under current California law, a PPC may only be appointed upon stipulation of the parties. The court cannot order parties to seek the services of a PPC. In the prior stipulation that had been in use for about ten years, various provisions of law were cited to try to identify the legal basis for the stipulation, and this was one of the areas that was revised in the current stipulation.

The committee reviewed case authority and law in considering the basis for the PPC stipulation. Briefly, California Constitution, Article VI, Section 1, is the provision of the Constitution that creates judicial power. In that



Judge Robert A. Schnider served as the Supervising Judge of the Family Law Department of the Los Angeles Superior Court 2005-2008, having been assigned to the Family Law Department of the Central Civil Courthouse since 1981. In 2000, he received the Outstanding Jurist Award from the Los Angeles County

Bar Association and was named the Judicial Office of the Year in 1997 by the Family Law Section of the State Bar of California. Judge Schnider is on the Board of Directors of AFCC, California. He received his JD degree from Boalt Hall, and in practice he was a Certified Family Law Specialist. He frequently lectures at programs and often teaches lawyers and judicial officers.



Angus Strachan, Ph.D., a clinical psychologist, practices at Lund & Strachan, Inc., in Santa Monica. He has done extensive research in family communication and family therapy at UCLA and in the UK. He mediates and evaluates custody disputes. He has been a promoter of the

PPC role in Southern California.



Mary Lund, Ph.D., is a clinical psychologist who does custody evaluations, mediation and family therapy in her Santa Monica practice at Lund & Strachan, Inc. She is on the Board of Directors of AFCC, California, and co-chaired their 2008 California conference. She is a frequent speaker and

trainer on issues in custody cases and alternative dispute resolution.



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of AFCC, California.

section, “Judicial power is vested in the Supreme Court, courts of appeal, superior courts.” Nothing in the section provides that judicial power can be delegated. There has been no California Supreme Court decision on this issue, and the last word was a court of appeal case, *Ruisi v. Thieriot* (1997) 53 Cal.App.4th 1197. In that case, the trial court appointed a special master to implement the custody orders. (The case also involved a pre-*Marriage of Burgess* (1996) 13 Cal.4th 25 “move away” request by the mother.) The parties had a history of contentious behavior, especially in regard to the custody issues. In analyzing the special master issues, the court of appeal made an extensive review of the various possibilities for court order of a special master or parenting plan coordinator.

- Family Code section 290 gives the court “inherent authority to enforce its orders by such orders as it determines necessary.” There is no explicit authority, however, for the court to appoint a substitute for the court’s responsibility and authority.
- Code of Civil Procedure sections 638 and 639 provide for the appointment of a referee in certain situations. In *Ruisi*, the mother did not consent to a referee. Where a party does not consent to a referee, the trial court’s authority to direct a special referee is limited to particular issues specified by statute such as the determination of an issue of fact to provide information to the court or to carry out a judgment or order or to deal with discovery motion and disputes, which are not ultimate decisions. The *Ruisi* court of appeal held that the trial court had no authority to refer questions of law. The order had provided that the parenting plan coordinator would decide “Any and all issues regarding custody.” Such sweeping authority was not necessarily limited to factual issues, and the trial court had no authority to compel a reference of unknown future disputes.
- Other code sections were considered. Family Code section 3160 provides for mediation, but the mediator does not have decision-making power as does a PPC. Evidence Code section 730 provides for a court-appointed expert or investigator to render a report and/or testify relative to the fact or matter. This process provides information to the court, but there is no decision-making power. Code of Civil Procedure section 1280 et seq. are the arbitration statutes. The function of arbitrator is similar to the PPC in that the function gives the power to make

decisions, but it still requires an agreement to arbitrate and it does not precisely parallel what a PPC does.

Because none of the existing codes fit the role of the PPC, which is new hybrid, our committee decided to cite none of codes described above; the stipulation is unique. The Parenting Plan Coordination process is an interesting mix of educative, facilitative, and decision-making roles performed by the PPC. Certain decisions made by the PPC can have the same force and effect as orders of the court, which may be appealed to the trial court by order to show cause or motion. Under present law, however, the hallmark of the PPC process is that it can only be by the agreement of the parties. This is why the stipulation for the PPC needs to be clearly and effectively written. If the party participation is voluntary, it is imperative that each party gives informed consent and has a clear understanding of the process.

The conclusions of our committee are summarized below by Judge Robert A. Schnider, Mary Lund, Ph.D., and Angus Strachan, Ph.D., psychologists, and Lynette Berg Robe, Esq., regarding the Parenting Plan Coordination Process and the changes in the Los Angeles stipulation.

View from the Bench

The Honorable Robert A. Schnider

Why We Encourage PPC Stipulations

Judicial officers have no problem identifying those cases that are the “frequent filers.” When you see the “Smith” case on tomorrow’s docket and a cold sense of dread creeps over you, it’s because you know the Smiths are returning for their 10th or 15th OSC on some issue such as where the child will get a haircut or whether the child can play Pop Warner football. Not only will these parties not get any reward for amassing these “frequent filer points,” it is also a good bet that no one will obtain any benefit from this hearing. The parents will be dissatisfied with some compromise-type ruling from the court. The lawyers will be adding an uncollectible receivable and the child, rather than having the fun of playing football, will feel like he or she *is* the football.

Experience has shown that these battling couples can more often stay out of court, incur much lower fees, find more personal satisfaction and benefit their children more by utilizing the more informal and immediate decision-making process provided by a PPC.

So Why Doesn’t Everyone Do It?

One of the hallmarks of these difficult cases is suspicion and paranoia. One or both of the parents does not

want to give up decision-making authority to the other side or even to the judicial officer. They have no choice in ceding to the court, but as noted above, the PPC can only be appointed by agreement. And even if the parties see some advantage in going to a different neutral (“well, it couldn’t be worse than having that ‘idiot Schnider’ who has unfairly ruled against me seven times”) they’re going to be suspicious of the name suggested by the other side and suspect tricks are hidden in each of the decisions about what powers to give to the PPC. And lawyers have legitimate concerns about future malpractice suits when they suggest a non-mandatory procedure that may produce an undesired result for a proven litigious client.

What Can The Court And Bar Do To Help?

A bench/bar committee first developed our stipulation for a “Special Master” (now PPC) about ten years ago. The committee made the decision to use the term “Parenting Plan Coordinator,” as it is more descriptive of the role and a less intimidating term. We have created this revised version to conform to clarifications in the law, to utilize the lessons of more years of experience, to clarify procedures, and to narrow the potential areas of dispute. We hope that use of a comprehensive “standard” and court pre-approved form of stipulation will create a baseline standard of practice and also reduce potential disputes.

Additionally, the Los Angeles Superior Court sponsored a full-day training for persons interested in being appointed as a PPC and have generated a list of those who attended. This list can now be a starting point for the difficult negotiation of “whom do we choose,” once agreement for the idea of a PPC has been reached.

Are These Only For Rich People?

Consider your hourly rate. Now add to that the hourly rate of likely opposing counsel. Now multiply that by the hours you’ll have to wait around in a court merely to get some hearing time. Without even considering document preparation time, motions to strike from the other side’s declaration, possible discovery disputes, the actual hearing itself, and the possible fights over the language of the order, the fee number you come up with is probably at least five times greater than the cost of using a few hours of the PPC’s time. And if you throw in the whole parade of litigation horrors, the litigation costs are probably 10 to 20 times as great as using a PPC. For the clients, PPCs are always less expensive than litigation.

So any case with repeated disputes about custody issues, particularly decision making or minor timeshare

adjustment issues, that case is a good candidate for stipulation for a PPC.

Through the recent review of the PPC process and revision of the stipulation, we hope we have made the process easier, fairer and more understandable and that the use of PPCs will grow.

How PPC’s work: Scope, Authority, Cases and Filing Decisions

Angus Strachan, Ph.D. and Mary Lund, Ph.D.

PPCs help make decisions in a timely and cost-effective manner. Good PPCs are organized and fair and able to respond in a reasonably timely fashion with kindness and firmness. They coach the parent in effective co-parenting and help them make joint parenting decisions. When there is an impasse, the PPC makes an order or a recommendation, depending on the scope of the issue. The parties stipulate to the scope and authority of the PPC. The new stipulation is a standard template that can be customized to the needs of the parties. To avoid confusion to the court, the parties and their counsel, however, the new stipulation is provided only in .pdf format. Parties and attorneys are encouraged to use the standard stipulation and indicate the variations by marking up the document or adding an addendum so that any changes are immediately apparent. There is also an appendix for the PPC to clarify the fee structure.

The standard stipulation proposes different levels of authority for different issues. Level 1 issues involve short-term practical matters that are often time-sensitive. Examples are the time, place, and conditions for exchanges of the child or a temporary change in the schedule for a special event such as a relative’s birthday during the other parent’s custodial time. Level 2 issues have longer effect but do not make significant changes to the role of a parent as a decision-maker or to custodial time. Examples of Level 2 decisions are decisions about healthcare or the choice of a speech therapist. Level 1 and 2 decisions are immediate orders as to the parties, and they become enforceable by the court when the PPCs “Notice of Decision” is signed by the judge. A parent can only challenge such decisions by bringing a motion or order to show cause to court within 30 days. Level 3 issues involve more major changes to the parenting plan that can only be made into court orders by stipulation of the parties or by the court at a hearing. The PPC can only make recommendations about such issues. Examples of Level 3 recommendations are decisions about counseling, changes in legal decision-making authority, significant changes in timeshare or relocation.

The role of the PPC depends very much on the type of case. PPCs may have cases where the focus has been on the implementation of a program for a child with special needs: decisions need to be made about what services are to be provided, by whom and at what frequency. In some cases, the focus is on scheduling, particularly the knotty problems of balancing summer school, camps, and vacations. In some cases, the PPC can help the parents move towards a new parenting plan and provide education about boundaries. In other cases, the focus is on a parent with a drug or alcohol problem or a major mental illness: decisions about step-up or step-down plans need to be made as the parent goes through different phases of his or her treatment.

One innovation is the development of a standard method for filing orders and recommendations with the court called a "Notice of Decision." There is a standard face sheet that provides spaces for the PPC to sign and for the judge to counter-sign that "any Level 1 or 2 decisions are so ordered." The PPC attaches to that cover page a letter or memo that shows the issues decided, the decision made, the rationale, and the level and date of the decision. The PPC sends the "Notice of Decision" to the parties and their counsel. Simultaneously, the original "Notice of Decision" and three copies are sent to the clerk of the court with a request that one be signed by the judge for the file and the other three be conformed and returned to the PPC and counsel. A copy of the "Notice of Decision" cover page appears at the end of this article.

The Attorney's Role

Lynette Berg Robe

Based on my experiences, I confirm that with a PPC in place, the kinds of cases that need PPCs will also need continuing attorney involvement. Reasonable people will make agreements through Conciliation Court, mediation, or negotiation between the attorneys and parties. The kinds of cases appropriate for the appointment of a PPC are those cases where there is an existing custody order, but the clients still find issues to argue about, and the alternative is serial post-judgment orders to show cause to resolve these ongoing disputes. Even if the client pays his or her attorney's fees and costs in full, these serial orders to show cause require considerable time and effort in order to achieve a minimal change, and many attorneys find little satisfaction in constantly returning to court to resolve these issues. Plus, the issues may need quick resolution, and with the minimum 16-court-day notice and filing requirements for a motion or order to show

cause and Conciliation Court appointments in child custody issues, there may not be enough time to set a hearing. Most of these issues will not have the exigency required for ex parte orders under Family Code section 3064.

The attorney's initial role is to call the client's attention to this expeditious ADR method of resolving these ongoing disputes. Because it requires the stipulation of the parties, the attorney must thoroughly review the PPC stipulation with the client to ensure that he or she understands the powers being given to the PPC, the nature of the issues that the PPC can resolve, the Level 1, 2, and 3 decisions/recommendations, and the differences between them. The attorney also may help to decide on the individual who will serve as the PPC. Any stipulation requires informed consent, so this is a vital role for the attorney. If the client wants changes to the PPC stipulation, these will need to be marked in handwriting on the stipulation. This way, if there are variations from the printed language, they are immediately apparent. The revised stipulation is being made available only in .pdf format in order to discourage changes unless they are immediately apparent on the face of the document.

Once the PPC is in place, the attorney may need to help the client with learning how to frame his/her requests to the PPC. The attorneys also may confer with the PPC in advance of the PPC's meeting with the clients as to an issue, or sometimes the attorneys and PPC may confer afterward. Then, once the PPC makes decisions or recommendations, the attorney needs to review the "Notice of Decision," and make certain that the decision clearly states the matter that was decided. If it is a recommendation only, then the attorney and the client need to decide whether or not the client wants to follow the recommendation and then may draft a stipulation for the parties to sign. If one party wants to follow the PPC's recommendation, and the other does not, then the attorney will need to file a motion/OSC requesting that the PPC's recommendation be made into a court order.

Finally, if the client becomes unhappy with the PPC, or if there is a genuine problem that the attorney thinks needs to be remedied, the attorney must deal with communicating the grievances to the PPC. First, the attorney and/or client will attempt to resolve the problem directly with the PPC. In some cases, the PPC may simply withdraw. If the PPC does not withdraw, and the matter cannot be resolved, then the attorney will need to file a motion to have the PPC stipulation set aside.

In assisting the client to use a PPC, the attorney may simply be exchanging one set of problems for another. Yet the PPC method is a way of resolving disputes quickly and less expensively for these bickering parents, and the hope is that, by going through this process and having more opportunity to speak for themselves, the clients eventually will learn how to resolve some of their disputes on their own. ■

** Judge Robert A. Schnider, Judge Thomas Trent Lewis, Commissioner Richard Curtis, Commissioner Alan Friedenthal, Mary Lund, Ph.D., Angus Strachan, Ph.D., and attorneys Jeffrey Jacobson, Heidi Tuffias, Leslie Shear, and Lynette Berg Robe participated. The drafting committee was composed of Commissioner Curtis, Angus Strachan, and Leslie Shear. As each segment was drafted by the drafting committee, the whole committee would meet to discuss the changes, the wording, etc. The penultimate stipulation was circulated widely among judges, attorneys, and mental health professionals for comment. The committee then additionally adopted some of those suggestions into the final stipulation.*

Correction

In Issue 1, 2008, we mistakenly mislabeled Anthony Williams in the photo on page five as Anthony Jones.

Our apologies to Mr. Williams!

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Form PPC-2 (Notice of Decision)

ACCESS THIS FORM ONLINE:

www.calbar.ca.gov/calbar/pdfs/sections/famlaw/notice-of-decision.doc

PARENTING PLAN COORDINATOR (Name, address & phone):	FOR COURT USE ONLY: FILE STAMP
JUDGE: DEPARTMENT: SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES BRANCH: STREET ADDRESS: CITY & ZIP CODE:	CASE NAME & NUMBER:

FINDINGS, DECISIONS AND ORDERS OF PARENTING PLAN COORDINATOR:

I, _____, declare that:

- 1. I was appointed by stipulation and court order as a Parenting Plan Coordinator (PPC) / Special Master on (date) _____ until (date) _____
- 2. After considering all the evidence presented, I have made the decisions set forth in Attachment 1, which shows the issue decided, the decision, the rationale, the level of the decision and the date when the decision was communicated to the parents, if different from today.
- 3. I communicated the decisions to the parents and counsel, if any, in a manner consistent with the terms of my appointment.
- 4. Any Level 1 or 2 decisions are so ordered:

_____ (TYPE OR PRINT NAME) _____ (SIGNATURE OF PPC) _____ (Date)

Any Level 1 or 2 decisions are so ordered:

_____ (TYPE OR PRINT NAME) _____ (SIGNATURE OF JUDGE) _____ (Date)