

The Honorable Janet Barton, Chair
Parenting Coordinator Rule Petition Review Committee
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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:

PETITION TO AMEND RULE 74	)	
OF THE RULES OF FAMILY LAW	)	Supreme Court No. R-15-0006
PROCEDURE	)	
	)	Amended Petition
_____	)	

Petitioner files the Amended Petition pursuant to this Court's prior order authorizing a modified comment period.

Upon consideration of the comments received, agreement on the part of the Parenting Coordinator Rule Petition Review Committee, and in the interest of brevity and clarity, Petitioner requests that Rule 74 be repealed in its entirety and replaced with the proposed rule in Appendix 1.

Introduction.

The Rules Forum reflects the filing of 22 comments during the first comment period, which ended April 27, 2015.

As directed by Administrative Order 2015-13, the committee met to discuss the submitted comments and hear from stakeholders and members of the public.

Much of the discussion during the May 11, 2015, meeting centered on the various comments that recommended limiting the circumstances under which a court could appoint a parenting coordinator. The clear consensus from the comments received by lawyers who practice in family court, lawyers who serve as parenting coordinators, judges who sit or have sat on the family bench, and family court litigants was that the court should limit appointments to circumstances where the parties can afford a parenting coordinator and either stipulate to the use of a parenting coordinator or the court finds that the parents' conflict has demonstrably harmed the child. A comment that discusses this approach at length is the one jointly submitted by the Honorable Peter B. Swann, Court of Appeals, Division 1; Honorable Sally Duncan, Superior Court in Maricopa County; and William G. Klain, Lang & Klain, P.C. Support for this approach resonated strongly with the committee.

With the committee's consensus on appointment of a parenting coordinator "by stipulation only,"¹ the other submitted comments, and the continued focus on

¹ As noted above, at least one of the comments recommended that court appointment was appropriate if the parents' conflict had demonstrably harmed the child. The committee believed that if such harm had occurred or was occurring, it would be better addressed by the filing of a petition to change legal decision-making than the appointment of a parenting coordinator.

direction given by Justice Rebecca White Berch to the Ad Hoc Parenting Coordinator Workgroup, Rule 74 has been completely revised.

The revised proposal is premised on the policy that a parenting coordinator will be appointed only when the parents agree to it, agree to be bound by the parenting coordinator's decision (provided that decision does not exceed the scope of the parenting coordinator's authority) and are aware of the costs and the scope and powers of the parenting coordinator's appointment. The rule also establishes that the parenting coordinator has a nontraditional dual role—first as a mediator to assist the parents in reaching agreement and second as an arbitrator if agreement is not achieved.

The committee met on May 18, 2015, to review the most recent draft and finalize it. Members of the public were present and were permitted to comment on it. They also were advised that another comment period will open on the Rules Forum, during which they can address comments to the Supreme Court.

Conclusion. Petitioner therefore requests that the Court open this newly amended petition for comments.

RESPECTFULLY SUBMITTED this 20th day of May, 2015.

By /s/ Janet Barton
The Honorable Janet Barton, Chair
Parenting Coordinator Rule Petition Review
Committee

APPENDIX 1

A. Purpose of Parenting Coordination. Parenting coordination is a child-focused alternative dispute resolution process. The overall objective of parenting coordination is to assist parents with implementation, compliance, and timely conflict resolution regarding their parenting plan, in order to protect and sustain safe, healthy, and meaningful parent-child relationships.

B. Appointment of a Parenting Coordinator. The court may appoint a third party as a parenting coordinator in proceedings under Title 25, A.R.S., at any time after entry of a legal decision-making or parenting time order only if each parent has agreed to the appointment by written stipulation or orally on the record in open court.

The stipulation must state:

1. that each parent understands how the parenting coordinator bills for services and the parents can afford the parenting coordinator's services;
2. the manner in which the parenting coordinator's fees will be allocated between the parents;
3. the method by which the parenting coordinator will be selected or the name of the agreed-upon parenting coordinator;
4. that the parents agree to the release of documents the parenting coordinator deems necessary to the performance of the parenting coordinator's services;
5. the term of the appointment; and

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6. that the parents agree to be bound by decisions made by the parenting coordinator that fall within the scope of the parenting coordinator's authority and relate to issues submitted to the parenting coordinator for decision.

Nothing in this rule is intended to prevent parents from requesting, or a court from appointing, parent coordination assistance through the court's conciliation court services, if available. Parents obtaining parenting coordinator services through the court's conciliation court services must agree to parts 4 through 6 above.

C. Selection of a Parenting Coordinator. A parenting coordinator appointed by the court must qualify as a parenting coordinator under paragraph D. A person appointed as a parenting coordinator cannot serve in any other function or role in the case. When each parent and the parenting coordinator agree, a person who is serving or has already served in a legal, treatment, evaluative, or therapeutic role in the case can be appointed as the parenting coordinator.

D. Persons Who Can Serve as a Parenting Coordinator. The following persons can serve as a parenting coordinator:

1. an attorney who is licensed to practice law in Arizona;
2. a psychiatrist who is licensed to practice medicine or osteopathy in Arizona;
3. a psychologist who is licensed to practice psychology in Arizona;
4. a person who is licensed to practice independently by the Arizona Board of Behavioral Health Examiners;

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1 5. professional staff of a court's conciliation services department; or

2 6. a person with education, experience, and expertise who is deemed qualified
3 by the court's presiding judge or a designee.

4 The court can set additional requirements for service as a parenting coordinator.

5 **E. Term of Service.** The term of the parenting coordinator will be designated in the
6 order of appointment.

7 **1. Initial Term.** A parenting coordinator's initial term cannot exceed one year
8 unless each parent and the parenting coordinator agree to a longer term.

9 **2. Reappointment.** The parenting coordinator cannot be reappointed at the end
10 of the term unless each parent and the parenting coordinator agree to the
11 reappointment in writing or orally on the record in open court.

12 **3. Replacement of the Parenting Coordinator.** Both parents can agree to
13 replace the existing parenting coordinator by stipulating to the replacement in
14 writing or orally on the record in open court. The stipulation that replaces the
15 parenting coordinator is subject to the statements required in paragraph B, above.

16 **4. Resignation.** The parenting coordinator can resign upon notice to each parent
17 and order of the court.

18 **5. Discharge.** Both parents can jointly agree to discharge the parenting
19 coordinator during the term of appointment. If only one parent wishes to
20 discharge the parenting coordinator, that parent must file a motion with the court

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that establish good cause for the requested relief. Simply disagreeing with one or more of the parenting coordinator's decisions does not constitute good cause for discharging the parenting coordinator.

F. Fees.

1. Disclosure of Fees. The parenting coordinator must fully disclose all fees and charges to each parent before services requiring payment can begin.

2. Adjustment to Allocation of Fees by Parents. Both parents may agree to a change in the allocation of fees by amending the agreement in writing with the parenting coordinator. Without the parents' agreement, a parenting coordinator cannot reallocate fees based on a change in a parent's financial circumstances.

3. Sanctions and Reallocation of Fees. In instances where one parent is using parenting coordinator services excessively or to harass the other parent, a parenting coordinator can recommend, as a sanction, an adjustment to the allocation of the parenting coordinator's fees. The parenting coordinator must submit a written recommendation to the court and each parent or counsel, if represented, explaining in detail the reason for the recommended fee reallocation.

G. Confidentiality. Parenting coordination is not a confidential process. Therefore, the communications between the following are not confidential:

1. between each parent and the parenting coordinator;
2. between the child and the parenting coordinator;

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3. between the parenting coordinator and other relevant parties to the parenting coordination process; and

4. with the court.

Counsel cannot attend parenting coordinator meetings with their client unless each parent and the parenting coordinator agree or if ordered by the court. The parenting coordinator can meet with counsel separately to obtain information relevant to the issue before the parenting coordinator.

H. Scope of Appointment and Authority. The court order appointing the parenting coordinator must specify the scope of the appointment.

1. A parenting coordinator's scope of appointment can include:

a. helping the parents identify disputed issues, reduce misunderstandings, clarify priorities, explore possibilities for compromise, develop methods of collaboration in parenting, and comply with legal decision-making authority and parenting time orders;

b. making decisions regarding implementation, clarification, and minor adjustments to parenting time orders;

c. making decisions on parenting challenges not specified in the parenting plan that the parents are unable to resolve. By way of example only, these challenges can include disagreements about: pick-up and drop-off locations, dates and times; holiday scheduling; discipline; health issues; personal care

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1 issues; school and extracurricular activities; choice of schools; and managing
2 problematic behaviors;

3 d. interviewing and requesting documentation from anyone who has relevant
4 information necessary to resolve the matter currently before the parenting
5 coordinator; and

6 e. recommending that the court order the parents or child to participate in
7 ancillary services, to be provided by the court or third parties, including but
8 not limited to physical or psychological examinations or assessments,
9 counseling, and alcohol or drug monitoring and testing.

10 2. A parenting coordinator must attempt to facilitate agreement on disputed
11 issues between the parents in a timely manner. If the parents are unable to reach
12 agreement, the parenting coordinator will decide any disputed issues within the
13 scope of the parenting coordinator's authority in a timely manner.

14 3. A parenting coordinator cannot make a decision that will:

15 a. affect child support, spousal maintenance, or the allocation of property or
16 debt;

17 b. change legal decision-making authority, except as stated in paragraph I;

18 or

19 c. substantially change parenting time, except as stated in paragraph I.

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I. Emergency Authority and Procedure.

1. If based upon the parenting coordinator's personal observation, the parenting coordinator determines that a parent's functioning is impaired and the parent is either incapable of fulfilling the court-ordered legal decision-making or parenting functions, or will expose the child to an imminent risk of harm, and it is in the best interest of the child to do so, a parenting coordinator is authorized to make an emergency change in the court's legal decision-making or parenting time orders.

2. When making an emergency decision, the parenting coordinator must notify the assigned judge and each parent or counsel, if represented, in writing by the next business day. The parenting coordinator must use a form substantially similar to the Parenting Coordinator's Report in Rule 97 of these rules. The report must include the reason for the emergency decision.

3. The court must hold a hearing on the emergency decision within 10 calendar days after receiving the parenting coordinator's emergency decision.

4. At the hearing, the court must approve and adopt, modify, or reject the parenting coordinator's emergency decision. The court must also decide what additional hearings, if any, are needed and set those additional hearings.

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J. Report. The parenting coordinator's decision on an issue must be written in a form substantially similar to the Parenting Coordinator's Report in Rule 97 of these rules. The parenting coordinator must:

1. mail or transmit the report to the assigned judge—but not the clerk of the court—no later than five business days after receipt of all information necessary to make a decision; and
2. mail or transmit a copy of the report to each parent or counsel on the same day it is mailed or transmitted to the court.

K. Court Action. The court, upon receipt of the parenting coordinator's report, must file the report. If the report contains confidential or private information, it must be filed in a manner that prevents the public from accessing the report, pursuant to Rule 13(D) of these rules.

Except as otherwise provided in paragraph I, upon receipt of the report, the court can do any of the following:

1. adopt the decision as an order of the court;
2. reject the decision and report in whole or in part as outside the scope of the parenting coordinator's authority and affirm the current court order; or
3. set a hearing regarding the decision.

The court may use the Order Regarding Parenting Coordinator's Report in Rule 97 of these rules for purposes of this paragraph.

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1 **L. Objection.** Provided that the parenting coordinator acted within the scope of
2 authority pursuant to this rule and the appointment order, the parenting coordinator's
3 decision is binding. If a parent believes that the parenting coordinator's decision
4 exceeds the scope of the parenting coordinator's authority, the parent may object to
5 the parenting coordinator's decision by filing a pleading with the court entitled
6 Objection. The objection must be filed within 10 business day of the receipt of the
7 parenting coordinator's report. The objection must explain in detail the reasons why
8 the parent believes the parenting coordinator exceeded the scope of authority and
9 whether a hearing is requested on the parent's objection.

10 **M.Action on Parent's Objection.** If either parent files an objection, any court
11 action will remain in effect pending resolution of the objection.

12 **N. Complaints about Unethical or Unprofessional Conduct by Parenting**
13 **Coordinators.** Complaints about alleged unethical or unprofessional conduct by
14 the parenting coordinator should be submitted to the parenting coordinator's
15 applicable licensing or regulatory board. If the parenting coordinator is not subject
16 to a licensing or regulatory board, the complaint should be brought to the court's
17 attention.

18 **O. Immunity.** The parenting coordinator has immunity in accordance with Arizona
19 law as to all acts undertaken pursuant to and consistent with the appointment order
20 of the court.

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- 1 **P. Applicability.** No court is required to employ or use parenting coordinators; but
- 2 in the event the court appoints a parenting coordinator, these rules apply.
- 3 **Effective date.** This rule applies to any appointment or reappointment of a
- 4 parenting coordinator that occurs on or after the effective date of the 2016
- 5 amendment of the rule.