

## Probate and Family Court Standing Order 1-17

### Parenting Coordination

#### (1) Applicability

- (a) This standing order applies to:
  - (i) the appointment of a parenting coordinator pursuant to an agreement by the parties to engage a parenting coordinator that is approved by the court and incorporated into an order or incorporated and merged into a judgment; and
  - (ii) the appointment of a parenting coordinator by a court order or judgment without agreement of the parties.
- (b) This rule does not apply to an agreement to use a parenting coordinator that is not incorporated into an order or incorporated and merged into a judgment.
- (c) A parenting coordinator may be appointed in cases filed pursuant to G. L. c. 208, 209, 209C and in other actions relating to the care and custody of a minor child or children, provided that there is an order or judgment establishing a parenting plan, custody and/or parenting time.
- (d) A parenting coordinator shall not be appointed in actions filed pursuant to G. L. c. 209A.
- (e) The appointment of a parenting coordinator does not divest the court of its exclusive jurisdiction to determine fundamental issues of care and custody and/or parenting time and support, and the authority to exercise management and control of the case, even where the parties have agreed to binding decision-making authority of the parenting coordinator.

#### (2) Definitions

In all sections of this standing order, the following definitions apply:

- (a) “Parenting coordination” is a child-focused process in which the parties work with a parenting coordinator in an effort to reduce the effects or potential effects of conflict on the child or children involved in the parenting plan. Although parenting coordination may draw upon alternative dispute resolution techniques, parenting coordination is not governed by SJC Rule 1:18.
- (b) “Parenting coordinator” means a court-appointed, third-party provider of parenting coordination services.
- (c) “Related professional experience” includes direct or supportive professional work with families involved in custody or parenting time disputes, or family therapy or child therapy.

(3) Qualifications of a Parenting Coordinator

- (a) To be approved by the court as a parenting coordinator, an individual shall:
  - (i) be an attorney who is licensed in Massachusetts, or be a licensed psychiatrist, licensed psychologist, licensed independent clinical social worker, licensed marriage and family therapist, or licensed mental health counselor who is licensed in Massachusetts; and
  - (ii) if an attorney, have at least four years of related professional experience undertaken after licensure in Massachusetts; if a licensed psychiatrist or licensed psychologist or licensed independent clinical social worker, have at least two years of related professional experience undertaken after licensure in Massachusetts; or if a licensed marriage and family therapist or licensed mental health counselor, have at least four years of related professional experience undertaken after licensure in Massachusetts; and
  - (iii) have professional liability insurance coverage of \$100,000 or more.
- (b) A parenting coordinator candidate shall complete the following training as approved by the Administrative Office of the Probate and Family Court prior to submitting an application:
  - (i) at least 30 hours of training in a mediation training program; and
  - (ii) at least 6 hours of training in intimate partner abuse and family violence dynamics to be established by the Probate and Family Court in conjunction with the Trial Court; and
  - (iii) at least 35 hours of accredited specialty training in topics related to parenting coordination, including, but not limited to, any mandatory training established by the Administrative Office of the Probate and Family Court, the role of the parenting coordinator in Massachusetts, the role of a parenting coordinator generally, communication, conflict management and dispute resolution skills, developmental stages of children, dynamics of high-conflict families, parenting skills, problem-solving techniques, and parenting in separate households.
- (c) Within each calendar year, a parenting coordinator shall complete a minimum of six hours of continuing education approved by the Administrative Office of the Probate and Family Court in one or more of the topics listed in subsection 3 (b)(iii) of this standing order and in relevant domestic relations case law and statutes or in a training topic established by the Administrative Office of the Probate and Family Court. This continuing education requirement is separate and distinct from the continuing education requirements for other fee generating appointment categories.

- (4) In accordance with SJC Rule 1:07, an individual who has the qualifications listed in section 3 of this standing order and seeks court appointment as a parenting coordinator shall submit an application to the Administrative Office of the Probate and Family Court to be included on the Category V – Parenting Coordination list. The application shall document that the individual meets the qualifications required in subsections 3 (a) and (b) of this standing order. If satisfied that the applicant meets the qualifications, the Administrative Office of the Probate and Family Court shall place the applicant’s name on the list of qualified parenting coordinators.
- (5) Approval of a Parenting Coordinator Engaged by Agreement of the Parties
- (a) In any action in which the custody and/or parenting time of a child or children of the parties is or was at issue, the parties, by agreement, may engage a parenting coordinator to assist them in dealing with existing or future conflicts regarding their access to and responsibilities for their child or children.
- (b) For the agreement to be enforceable by the court, the parties shall file a “Joint Petition/Motion to Change a Judgment/Order” (Form CJD 124) with the court to request that their agreement be incorporated into an order or incorporated and merged into a judgment. The court shall enter such an order or judgment if it finds that the parenting coordinator has the qualifications set forth in section 3 of this standing order, or is otherwise qualified to be the parenting coordinator, and that the agreement:
- (i) is in writing and signed by the parties and the parenting coordinator; and
  - (ii) indicates whether the parenting coordinator is on the Category V list, and if not on the Category V list, how he or she is qualified to be the parenting coordinator; and
  - (iii) states the duties of the parenting coordinator, including whether the parties agree that the parenting coordinator shall have binding decision-making authority, and if so, the scope of said authority; and
  - (iv) states the period of time that the parenting coordinator will serve in the role; and
  - (v) states the amount or rate of compensation to be paid to the parenting coordinator, how the fees and expenses of the parenting coordinator are allocated between the parties, and the maximum expenditure for each party during the period of appointment as provided in subsection 5 (b)(iv) of this standing order; and
  - (vi) is otherwise consistent with the best interests of the child or children.

- (c) Before incorporating the agreement into an order or incorporating and merging the agreement into a judgment, the judge shall inquire of the parties as to whether they understand that:
  - (i) if incorporated into an order, the agreement cannot be changed by the court without the filing of a motion and a showing of good cause and a showing that such change is in the best interests of the child or children; or
  - (ii) if incorporated into a judgment, cannot be modified by the court without the filing of complaint for modification and a showing of a material change in circumstances and a showing that such modification is in the best interests of the child or children; and
  - (iii) the parties have the right to access the court so that the court can determine fundamental issues of care and custody and/or parenting time and support, even where the parties have agreed to binding decision-making authority of the parenting coordinator; and
  - (iv) the court will not draw any adverse inference if the party does not agree to use a parenting coordinator.
  
- (6) Appointment of a Parenting Coordinator by Court, Without Agreement of the Parties
  - (a) In any action in which the custody and/or parenting time of a child or children of the parties is or was at issue and the court determines that the level of conflict between the parties with respect to that issue so warrants, the court may appoint a parenting coordinator in accordance with this section if the court finds that:
    - (i) it is in the best interests of the child or children involved in the parenting plan; and
    - (ii) the parties have failed to successfully implement the parenting plan; or
    - (iii) the level of parental conflict is, or may become, detrimental to the child or children involved in the parenting plan.
  
  - (b) During the pendency of an action, by motion of a party or on the court's own initiative, and after notice and hearing, the court may appoint a parenting coordinator for the pendency of that action. Unless sooner terminated in accordance with this standing order, the appointment shall terminate upon the entry of a judgment in that action.
  
  - (c) Upon entry of a judgment establishing or modifying a parenting plan, custody and/or parenting time, the court, after notice and hearing, may appoint a parenting coordinator. The court may appoint the individual who served as a parenting

coordinator during the pendency of the underlying action. Unless sooner terminated in accordance with this standing order, the appointment of a post-judgment parenting coordinator shall not exceed two years.

- (d) An order or judgment appointing a parenting coordinator without the agreement of the parties shall include:
  - (i) written findings as to why a parenting coordinator is being appointed pursuant to subsection 6 (a) of this standing order;
  - (ii) the name, business address, e-mail address, and telephone number of the parenting coordinator; and
  - (iii) the duties of the parenting coordinator; and
  - (iv) the period of time that the parenting coordinator will serve in the role; and
  - (v) written findings regarding parenting coordination fees pursuant to subsection 15 (b) of this standing order and how the fees and expenses of the parenting coordinator are allocated between the parties.
- (e) Notwithstanding any other provisions of this standing order, “a judge may not require the parties to use the services of a parent[ing] coordinator if the order would require one or both parents to pay for the services without his or her consent.” Bower v. Bournay-Bower, 469 Mass. 690 (2014). If neither party agrees to pay to use the services of a parenting coordinator, the court is not permitted to enter an order or judgment requiring the use of a parenting coordinator.

(7) Permitted Duties of All Parenting Coordinators

As appropriate, and as determined by the order incorporating an agreement, the judgment incorporating and merging an agreement, an order or a judgment, a parenting coordinator may:

- (a) assist the parties in amicably resolving disputes and in reaching agreements about the implementation of and compliance with the order regarding the child or children in their care including, but not limited to, the following types of issues:
  - (i) minor changes or clarifications of the existing parenting plan;
  - (ii) exchanges of the child or children including date, time, place, means of and responsibilities for transportation;
  - (iii) education or daycare including school choice, tutoring, summer school, before and after school care, participation in special education testing and programs, or other educational decisions;
  - (iv) enrichment and extracurricular activities including camps and jobs;

- (v) the child or children's travel and passport arrangements;
  - (vi) clothing, equipment, and personal possessions of the child or children;
  - (vii) means of communication by a party with the child or children when they are not in that party's care;
  - (viii) role of and contact with significant others and extended families;
  - (ix) psychotherapy or other mental health care including substance abuse or mental health assessment or counseling for the child or children;
  - (x) psychological testing or other assessments of the children; and
  - (xi) religious observances and education.
- (b) educate the parties about making and implementing decisions that are in the best interest of the child or children;
  - (c) assist the parties in developing guidelines for appropriate communication between them;
  - (d) suggest resources to assist the parties; and
  - (e) assist the parties, where appropriate, in identifying and addressing patterns of behavior and in developing parenting strategies to manage and reduce opportunities for conflict in order to reduce the impact of any conflict upon their child or children.

(8) Required Duty of All Parenting Coordinators

Whenever the parties come to an agreement with the assistance of the parenting coordinator that modifies an existing order or judgment, the parenting coordinator must inform the parties that the agreement is not enforceable unless it is submitted for approval and incorporated into an order or incorporated and merged into a judgment by the court.

(9) Duties Not Permitted of All Parenting Coordinators

A parenting coordinator may not:

- (a) except as permitted by section 10 of this standing order, communicate orally or in writing with the court or any court personnel regarding the substance of the action;
- (b) testify in the action as an expert witness;
- (c) facilitate an agreement by the parties that would change legal custody from one party to the other or that would change the physical custody or parenting plan in a way that may result in a change of child support;

- (d) offer legal advice, representation, therapy or counseling;
- (e) delegate any portion of the parenting coordination process to anyone else, as the appointment is personal in nature; and
- (f) make any binding decisions for the parties without the parties' express written agreement that has been incorporated into an order or judgment.

(10) Permissible Court Activities of All Parenting Coordinators

A parenting coordinator may:

- (a) produce documents and testify in the action as a fact witness in response to a subpoena issued at the request of a party or an attorney for a child of the parties, or upon action of the court;
- (b) if concerned that a party or child is in imminent physical or emotional danger, file a motion or complaint to request an immediate hearing; and
- (c) file a motion or complaint for the appointment of a guardian to assert or waive a child's privilege.

(11) Confidential and Privileged Information

- (a) The parenting coordinator shall have access to all non-impounded case records in the action. If a document or any information contained in a case record is impounded, the court shall determine whether the parenting coordinator may have access to it and shall specify any conditions to that access. Only the court may address access to an impounded document.
- (b) A parenting coordinator may not require the parties or an attorney for the child to release any confidential or privileged information that is not included in the case record.
- (c) Information acquired in the course of a parenting coordination appointment is confidential. The parenting coordinator shall use such information only for the benefit of the parties or the child or children involved in the parenting plan. Such information may be disclosed by the parenting coordinator to a party or parties, to an attorney for the child, to an attorney for a party, and in court pursuant to section 10 of this standing order.
- (d) A party may release to the parenting coordinator his or her own educational, medical, and other third-party information and such information of the child or children involved in the parenting plan. However, a child's psychotherapy, counseling or social worker privilege may be waived only by a guardian appointed specifically by the court to investigate and assert or waive the child's privilege. A party or the parenting

coordinator may at any time file a motion or complaint for the appointment of a guardian to assert or waive the child's privilege. The request shall specify the scope of the information sought and the reasons for seeking the waiver. The parties and all attorneys involved in the matter must be provided a copy of the request and notice of hearing.

(12) Conflict of Interest

The court may not appoint an individual as a parenting coordinator if the person has served or is serving in a professional capacity of any sort with either party, or both parties, or the child or children in the case, including, but not limited to, therapist, guardian ad litem, attorney or attorney for the child or children. After appointing a person pursuant to this standing order as a parenting coordinator in a case, the court may not subsequently appoint the person as a guardian ad litem or attorney for the child in the same case, or any other case, involving the parties or children.

(13) Domestic Violence

If there are credible allegations or findings of domestic violence committed by a party, against a party or a child or children involved in the action, the court:

- (a) shall offer each party an opportunity to consult with an attorney or domestic violence advocate of his or her choosing before accepting an agreement pursuant to section 5 of this standing order; and
- (b) shall not appoint a parenting coordinator over the objection of a party.

(14) Extension and Early Termination of Parenting Coordination Appointment During the Pendency of a Parenting Coordination Appointment; Replacement and Resignation of a Parenting Coordinator During the Pendency of a Parenting Coordination Appointment; Modification During the Pendency of a Parenting Coordination Appointment

- (a) Extension of Parenting Coordination Appointment During the Pendency of a Parenting Coordination Appointment
  - (i) The parties and the parenting coordinator may agree in writing to an extension of the appointment. To be enforceable by the court, the agreement must be submitted for approval and incorporated into an order or judgment in accordance with the provisions of section 5.
  - (ii) If there is an action pending, a party may file a motion asking to extend the appointment. In making its determination, the court must consider the provisions of subsections 6 (a) and 15 (b) and enter the required findings. The court may extend the appointment for good cause shown and upon a showing that such extension is in the best interests of the child or children involved in

the parenting plan. The first extension, and any subsequent extension, if allowed, shall not be for more than one year.

- (iii) If there is no action pending, a party may file a complaint for modification asking to extend the appointment. In making its determination, the court must consider the provisions of subsections 6 (a) and 15 (b) and enter the required findings. The court may extend the appointment if there has been a material change in circumstances and upon a showing that such extension is in the best interests of the child or children involved in the parenting plan. The first extension, and any subsequent extension, if allowed, shall not be for more than one year.

(b) Early Termination of Parenting Coordination Appointment During the Pendency of a Parenting Coordination Appointment

- (i) The parties may agree to terminate the parenting coordination appointment. To be enforceable by the court, the agreement must be submitted for approval and incorporated into an order or judgment in accordance with the provisions of section 5.
- (ii) If there is an action pending, a party may file a motion asking to terminate the appointment. The court may terminate the appointment for good cause shown and upon a showing that such termination is in the best interests of the child or children involved in the parenting plan.
- (iii) If there is no action pending, a party may file a complaint for modification asking to terminate the appointment. The court may terminate the appointment if there has been a material change in circumstances and upon a showing that such termination is in the best interests of the child or children involved in the parenting plan.

(c) Replacement of a Parenting Coordinator During the Pendency of a Parenting Coordination Appointment

- (i) The parties may agree to replace the parenting coordinator with a different parenting coordinator. To be enforceable by the court, the agreement must be submitted for approval and incorporated into an order or judgment in accordance with the provisions of section 5.
- (ii) If there is an action pending, a party may file a motion asking to replace the parenting coordinator with a different parenting coordinator. The court may order such replacement for good cause shown and upon a showing that such replacement is in the best interests of the child or children involved in the parenting plan.

- (iii) If there is no action pending, a party may file a complaint for modification asking to replace the parenting coordinator with a different parenting coordinator. The court may order such replacement if there has been a material change in circumstances and upon a showing that such replacement is in the best interests of the child or children involved in the parenting plan.
- (d) Resignation of Parenting Coordinator During the Pendency of a Parenting Coordination Appointment
  - (i) A parenting coordinator may resign at any time by written notice sent by first-class mail to each party and any attorney for the party, the child or children. The notice shall state the effective date of the resignation and inform the parties that they may ask the court to appoint a different parenting coordinator. The notice shall be sent at least 15 days before the effective date of the resignation. Promptly after mailing the notice, and at least seven days before the effective date of resignation, the parenting coordinator shall file a copy of the notice with the court.
  - (ii) The parties may agree to the appointment of a different parenting coordinator. To be enforceable by the court, the agreement must be submitted for approval and incorporated into an order or judgment in accordance with the provisions of section 5.
  - (iii) If an action is pending, a party may file a motion seeking the appointment of a different parenting coordinator. The court may order such appointment for good cause shown and upon a showing that such replacement is in the best interests of the child or children involved in the parenting plan.
  - (iv) If there is no action pending, a party may file a complaint for modification seeking the appointment of a different parenting coordinator. The court may order such appointment if there has been a material change in circumstances and upon a showing that such replacement is in the best interests of the child or children involved in the parenting plan.
- (e) Modification
  - (i) For issues other than those listed in subsections 14 (a) through (d), during the pendency of a parenting coordination appointment, the parties may agree to modify the parenting coordination appointment. To be enforceable by the court, the agreement must be submitted for approval and incorporated into an order or judgment in accordance with the provisions of section 5.
  - (ii) For issues other than those listed in subsections 14 (a) through (d), during the pendency of a parenting coordination appointment, if an action is pending, a

party may file a motion to change the provisions of a parenting coordination appointment. In making its determination, the court must consider the provisions of subsections 6 (a) and 15 (b) and enter the required findings. The court may order such change for good cause shown and upon a showing that such change is in the best interests of the child or children involved in the parenting plan.

- (iii) For issues other than those listed in subsections 14 (a) through (d), during the pendency of a parenting coordination appointment, if there is no action pending, a party may file a complaint for modification to modify the provisions of a parenting coordination appointment. In making its determination, the court must consider the provisions of subsections 6 (a) and 15 (b) and enter the required findings. The court may order such modification upon a showing of material change in circumstances and a showing that such modification is in the best interests of the child or children involved in the parenting plan.

(15) Fees

- (a) Where the parties have entered into an agreement that has been incorporated into an order or judgment pursuant to section 5 of this standing order, the agreement must include the amount or rate of compensation to be paid to the parenting coordinator and how the fees and expenses of the parenting coordinator are allocated between the parties.
- (b) If the court orders parties to parenting coordination, the court must enter written findings that one or both of the parties consent to the allocation of fees and expenses of the parenting coordinator and the party or parties have the financial means to make such payment. The court shall enter an order allocating the fees and expenses of the parenting coordinator in accordance with the party's or the parties' consent. "[A] judge may not require the parties to use the services of a parent[ing] coordinator if the order would require one or both parents to pay for the services without his or her consent." Bower v. Bournay-Bower, 469 Mass. 690 (2014). If neither party agrees to pay to use the services of a parenting coordinator, the court is not permitted to enter an order or judgment requiring the use of a parenting coordinator.

(16) Effect of Standing Order 1-17 on Existing Parenting Coordination Appointments

Section 14 applies to all parenting coordination appointments, regardless of whether the appointment was prior to the effective date of this standing order.

Effective Date: July 1, 2017