

# **Parenting Consulting – Frequently Asked Questions**

Changes to the essential characteristics of parenting consulting on the list below (this list is not meant to be exhaustive) are discouraged:

- Not a confidential proceeding
- Must operate under a court order
- No major changes to parenting schedule/custody

## **General Questions**

### **Where do the forms provided on Mediation Center’s Resources page come from?**

Based on the challenges of working with high conflict families and increased ethics complaints against family neutrals, there was a perceived need for clarity and predictability of the Parenting Consultant (“PC”) role in Minnesota. Mediation Center in affiliation with Hamline University, Minnesota members of the American Academy of Matrimonial Lawyers (AAML) and the Minnesota Chapter of the Association of Family and Conciliation Courts (AFCC) convened a group of PCs, family court and ADR professionals. The goal of the group was to create and provide a tool for judges, attorneys, and neutrals that represent high standards of practice for PCs. The group agreed to work with professional associations, the ADR Ethics Board and others to distribute and educate target groups about the PC role and standards.

Participants included: Peggy Cottrell, Mike Goldfarb, Aimee Gourlay, Karen Irvin, Caitlyn Lothian, Kevin McGrath, Mindy Mitnick, Andrea Niemi, Kelly Semler, and Nancy Zalusky Berg.

### **Can I “tweak” the provisions in the Model Contract and Model Court Order?**

Yes, and the parties may also suggest changes. There are annotations in the model document to indicate where the drafters felt it would be appropriate for the parties to make changes based on their own needs. This work is designed as a starting point; feel free to use and revise as best fits your needs. Any use or reliance on this work is at your risk. The authors have not provided you with any legal advice, and you should consult an attorney in your jurisdiction. Please e-mail suggestions for improvement to the documents, or additional questions to include in these FAQs, to [MediationCenter@Hamline.edu](mailto:MediationCenter@Hamline.edu) with the subject “PC Updates.” Periodic updates will be posted at this page.

We discourage changing these essential characteristics of parenting consulting, specifically those sections not marked in model order (this list is not meant to be exclusive):

- not a confidential proceeding;
- must operate under a court order.

Format changes (such as spacing, tabbing, font, etc.) are acceptable.

It is expected that you will format the order and stipulation to your case, fill in the appropriate blanks, and delete the comments, headers, and footers before it is submitted to the Court, PC and parties.

**How will it ever happen that PCs will get these agreements in the court order? I love the idea but I sometimes don't know until months after an appointment, and after about 100 cases I think I've been notified two or maybe three times before an appointment that I was being appointed.**

Attorneys should notify PCs before appointing them. We need to do more education. If you are appointed and were not notified, then you should ask the parties or attorneys to amend the order of appointment using the language you want. Many PCs get into trouble when they agree to serve under unclear or even unethical orders.

**What is the purpose behind Section XIV of the Model Order and Stipulation? Why is appointment contingent on the signing of the PC fee agreement?**

The drafters included this provision because too many PCs have been appointed by the Court without notice.

**What is the difference between a Parenting Consultant and Parenting Coordinator?**

They are the same role. Most jurisdictions and the Association of Family and Conciliation Courts use Parenting Coordinator. Minnesota uses Parenting Consultant.

## **PC Model Court Order**

### **Section XI Legal Proceedings**

*"The PC is not a party to the proceedings and will only testify under subpoena."*

## **What are PCs to do when they are accused of wrong doing on a case, do they have no right to testify on their own behalf?**

Judges are trained to evaluate the credibility of evidence. It would not be uncommon for one party to be dissatisfied with a PC decision. The other party also presents evidence why the PC decision was proper to the court, and the judge weighs both sides' evidence when deciding the outcome.

Either party may ask for the PC to present evidence. Unless asked, the PC must refrain from providing an opinion to the court. When a PC testifies at the request of a party, it is in a forum where both sides may cross-examine the PC about his or her opinion, thus providing procedural protections.

If one or both parties are not represented by a lawyer, this does not change how the PC interacts with the court. It is important not to "advocate" for one party who is not represented, as this is not the role of a PC.

## **Section XIII Review by the Court and/or Appeals**

*"Any claims filed in court arising from the parties' work with the PC, including, but not limited to fee disputes, shall be raised in the file under which the Order was made."*

## **If the PC is not a party, my understanding is that they cannot bring nonpayment issues to the court under the same court file. Is that true?**

If the parties agree to this stipulated contract and sign the agreement, then they are agreeing that the PC could ask the court to resolve fee disputes.

## **Section XIII Review by the Court and/or Appeals**

*"Parties agree that the Court shall review the decisions of the PC using the abuse of discretion standard."*

## **Where does one find this standard?**

The parties agree to the standard of review that they want the Court to use. Abuse of discretion is the standard preferred by the working group.

- See MN Court of Appeals standards of review at <http://www.lawlibrary.state.mn.us/casofrev.pdf>

## **Abuse of Discretion**

“A district court abuses its discretion when it makes findings unsupported by the evidence or when it improperly applies the law.” *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 716 (Minn. App. 2009), *review granted* (Minn. Sept. 29, 2009), *appeal dismissed* (Minn. Feb. 1, 2010); see *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997).

“An abuse of discretion occurs when the district court resolves the matter in a manner that is ‘against logic and the facts on [the] record.’” *O’Donnell v. O’Donnell*, 678 N.W.2d 471, 474 (Minn. App. 2004) (quoting *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984)).

“Misapplying the law is an abuse of discretion.” *Bauerly v. Bauerly*, 765 N.W.2d 108, 110 (Minn. App. 2009); *Schisel v. Schisel*, 762 N.W.2d 265, 272 (Minn. App. 2009) (stating, in the context of a child-support dispute, that “[t]he [district] court abuses its discretion if it erroneously applies the law to the case”).

## Practice Questions

**I am the second PC on a case with very high conflict parents. A party threatened to report me to the ADR Ethics Board if I don’t do what they want. This person is very controlling. I don’t want to strand the other parent, but am worried how to proceed. What should I do to avoid this type of situation in the future?**

Get off the case. If you made a decision in the threatening parent’s favor, the other parent could never be sure it wasn’t because you were afraid to do otherwise.

You also want to make sure to do a very thorough informed consent/orientation to the process. That should include some discussion about the probability that someone will disagree with a decision. When you are told there has already been a PC don’t just agree to serve. Meet for a half hour or an hour and then see if you all want to work together. Most second cases are really hard and this meeting is a good way to figure out if there was just a personality mismatch between PC and client or, more likely a personality disorder.

**Do you have any advice for when it comes time to making a decision as a PC?**

All decisions should be written as though it will be appealed to a judge. All PC writings should be clear in language and reasoning.

All decisions must be written. Decisions need not be formatted as a court order, but should contain clear decision language. Decisions should not be stated as recommendations, as decisions and recommendations are two different documents. The PC should be clear and intentional about the effect of the document.