CASE NO. C064475

SUPERIOR COURT CASE NO. 34-3009-80000359

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

RANDY RAND, ED.D.

Plaintiff and Appellant,

v.

BOARD OF PSYCHOLOGY,

Defendant and Respondent.

BRIEF OF AMICUS CURIAE
ASSOCIATION OF CERTIFIED FAMILY LAW SPECIALISTS

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, THIRD **APPELLATE DISTRICT, DIVISION**	Court of Appeal Case Number: C064475
ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* LESLIE ELLEN SHEAR, CFLS,* CALS* (SBN 72623) 16133 Ventura Blvd., Floor 7, Encino, CA 91436-2403 *State Bar of California, Board of Legal Specialization TELEPHONE NO.: 818-501-3691 FAX NO. *(Optional):* 818-501-3692 E-MAIL ADDRESS *(Optional):* custodymatters@earthlink.net ATTORNEY FOR *(Name):* Amicus Curiae ACFLS	Superior Court Case Number: 34-3009-80000359 ***FOR COURT USE ONLY***
APPELLANT/PETITIONER: RANDY RAND, ED.D. RESPONDENT/REAL PARTY IN INTEREST: BOARD OF PSYCHOLOGY	

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[ ] Continued on attachment 2.

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Date: 1-27-11

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I. Introduction to Parenting Coordination and Purpose of ACFLS Amicus Brief

> Parenting coordination is a non-adversarial process that aims to minimize the impact of high-conflict custody disputes through parent education, mediation, conflict resolution, and intensive case management.
>
> American Psychological Association (2010) *The Parenting Coordination* (PC) *Project Implementation and Outcomes Study Report* 1 (http://www.apapracticecentral.org/update/2010/04-29/parenting-coordination.aspx)

> Although Special Mastering provides a unique opportunity for experienced forensic psychologists to work in a lucrative and challenging emerging role, practicing at the interface of the legal psychological fields also presents substantial risks. The high-conflict, adversarial nature of the population served, combined with the potential for review from multiple regulatory bodies, exacerbates this risk. The contrasting legal and psychological cultures create different professional conduct expectations for the Special Masters, leaving them vulnerable to review by multiple standards. The lack of coordination of these review processes has led to Special Masters enduring the stress of sequential review processes (forum shopping) for the same alleged misconduct as disgruntled litigants move through the legal review process and then initiate complaints to the private professional and public licensing agencies.
>
> Sullivan (2004) *Ethical, Legal, and Professional Practice Issues Involved in Acting as a Psychologist Parent Coordinator in Child Custody Cases* 42 Fam. Ct. Rev. 576, 581

This appeal arises from discipline by the California Board of Psychology of Randy Rand, a licensed psychologist, based upon conduct in his capacity as a court-appointed child custody special master (parenting coordinator[1]) in Sonoma County, and as an expert witness testifying in a Florida family law court proceeding.

[1] The most common terms for this role in California are child custody special master, parenting plan coordinator, and parenting coordinator. As the model has developed, there is an emerging consensus to

Parenting coordination (child custody special master) is a form of consensual dispute resolution[2] for high conflict or complex child custody cases. Family courts use this service model to provide more individualized and ongoing services to families who engage in chronic relitigation, and to reduce family court caseloads. Parenting coordinators appointed by stipulation of the parties work with parents to *implement and adapt court-ordered parenting plans* (custody and visitation orders) in cases with complex issues, high conflict parents, or a need for responsive day-to-day management to protect children or address special needs. Parenting coordinators facilitate joint parental decisionmaking and "arbitrate" issues where the parents fail to reach consensus.

A small percentage of the family law caseload utilizes a greatly disproportionate share of courthouse resources in chronic custody relitigation. These families are often better served by parenting coordination

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use the term "parenting coordinator" or the abbreviation "PC". Other terms are used in various jurisdictions,

> The ability to compare roles and functions of PC's across jurisdictions through AFCC quickly led to the discovery that the role was characterized by an interesting evolution in nomenclature. While essentially similar in function and practice, the role was being called by many different names across jurisdictions. For example, the role has been called "special master" in California, "med-arbiter" in Colorado, "wiseperson" in New Mexico, "custody commissioner" in Hawaii, and "family court advisor" in Arizona (AFCC, 2003). The AFCC Task Force on Parenting Coordination has suggested consistent use of the term "Parenting Coordinator" for the sake of continuity and comprehensiveness of professional role development and consistency of practice across jurisdictions (AFCC, 2003, p. 2).
>
> Kirkland and Sullivan (2008) P*arenting* C*oordination* (PC) P*ractice*: A S*urvey of* E*xperienced* P*rofessionals* 46 Fam. Ct. Rev. 622, 623

[2] The term "consensual dispute resolution" (CDR) is gradually replacing "alternative dispute resolution" (ADR) to signal the greater and complementary role these non-adjudicative models play to adjudication.

because it informally addresses problems on a day-to-day basis rather than waiting until they accumulate or precipitate a crisis that lands the family back in the courtroom.

This hybrid intensive service model can incorporate elements of parent education, case management, mediation, arbitration and evaluation and other tools. Studies (cited herein) have found it to be an effective service model for reducing family court caseloads and providing more effective, individualized services to families that would otherwise experience frequent relitigation.

Most parenting coordinators are family lawyers or mental health professionals with special expertise in custody issues, but California parents can select any person they trust as a parenting coordinator – including a clergyperson, community elder or other respected individual. Consequently, not every parenting coordinator in California is a licensed professional. At least one pilot project in Washington D.C. has used unlicensed graduate student interns as parent coordinators to serve low income family court populations – a model California courts may emulate if they want to offer this form of consensual dispute resolutions to families who cannot afford to pay the costs.

Parenting coordinators work with a uniquely challenging population of family law litigants,

> Unlike many alternative dispute resolution processes, however, PCs provide services to the most conflicted coparents and the most vulnerable children. Judges, attorneys and mental health professionals have long agreed that the profound psychological and relational issues that characterize these families make them a poor fit for the more adversarial legal processes they typically find themselves repeatedly utilizing.
>
> Sullivan (2008) I*ntroduction to the* S*pecial* I*ssue on* P*arenting* C*oordination* 5 Journal of Child Custody 1

Parenting coordination is high-risk work as many disgruntled parties file complaints with appointing family courts and licensing agencies. Professionals are reluctant to take on this work because they frequently must defend multiple grievances that place their licenses and livelihoods in considerable jeopardy. Parents are reluctant to stipulate to appointment of a parenting coordinator if there is inadequate supervision and regulation of the conduct of parenting coordinators.

While most grievances are without merit, some parenting coordinators engage in unwise or unprofessional conduct. The decisions that this Court must make in this case entail balancing those competing public policy concerns.

Parenting coordination emerged in California and Colorado in the early 1990's offering intensive services designed to help parents learn how to manage and resolve their own parenting conflicts, thereby protecting children from the adverse consequences of ongoing parental conflict about them,

> In 1994, the concept of parenting coordination was spawned by a concerned group of professionals in California and Colorado who realized that some high conflict families remained chronically mired in conflict and required something different. [FN] For these families, the traditional tried and true approaches to containing familial conflict such as litigation, mediation, forensics, and therapy had not worked. Thus, the concept of parenting coordination was conceived as a *different* and *needed dispute resolution intervention*.
>
> Shaped to meet the needs of high conflict families, parenting coordination is a hybrid dispute resolution process that offers parents education, coaching, case management, mediation and arbitration support. The goal is to assist parents to manage their parenting conflicts and making parenting decisions themselves. Therefore, the decision making role of the parenting coordinator is viewed as a last resort, if considered at all. In parenting coordination, presenting conflicts are neither pathologized as in therapy, nor criminalized as in court. In this distinctly different dispute resolution approach, parents' conflicts are viewed as opportunities for parents themselves to learn how to address these conflicts and each other more effectively. And, the parenting coordinator is right

> there educating, coaching, and cheering the parents on, believing they can do it. All the while, the children are benefiting from the diminished level of familial conflict.
>
> Greenberg (2010) *Fine Tuning the Branding of Parenting Coordination ". . . You May Get What You Need"* 48 Fam. Ct. Rev. 206-207

Sixteen states have parenting coordination statutes (See Appendix). Trained parenting coordinators are listed on line in all 50 states and some other countries. California has no enabling legislation or Judicial Council rules for parenting coordination. California parenting coordination is purely a creature of stipulated appointment orders that delineate the duties, rights and responsibilities of the parenting coordinator and the parents. (Shear (2008) *In Search of Statutory Authority for Parenting Coordinator Orders in California: Using a Grass-roots, Hybrid Model Without an Enabling Statute* 5 Journal of Child Custody 88)

Rand contends that the Board of Psychology is without jurisdiction to discipline court-appointed parenting coordinators because they act as subordinate judicial officers rather than engaging in the practice of psychology within the meaning of Bus. & Prof. Code §2903. Rand further contends that the standards of conduct for parenting coordinators are not sufficiently clearly articulated to provide a basis for licensing board action.

The Attorney General responds that the Cal. Rules of Court, rules 10.701(b) and 10.703(b)(1) require that subordinate judicial officers be lawyers, and that conduct beneath the general standard of care can be the basis for professional licensing discipline in the absence of concrete rules of conduct. We note that rule 10.462 spells out minimum education requirements and expectations for subordinate judicial officers, including the "new judge education" provided by the Administrative Office of the Courts' Education Division/Center for Judicial Education and Re-

search (CJER), that a mental health professional working as a parenting coordinator is unlikely or unable to meet.

When a licensed professional works as a parenting coordinator or other quasi-judicial dispute resolution professional, his or her licensing agency must have jurisdiction over discipline. Otherwise, the most egregious conduct by a parenting coordinator could not be the basis for loss or suspension of a professional license. Such a policy would fail to protect the public.

On the other hand, parenting coordination and other family law quasi-judicial dispute resolution roles differ materially from the traditional settings or service models for which codes of professional conduct were developed. The appointing family court, not a disciplinary agency, is best positioned to engage in contextual fact-finding and understand the events in a particular case. Moreover, as we discuss more fully herein, guidelines promulgated by professional organizations for parenting coordination, child custody evaluation and other quasi-judicial dispute resolution services expressly state that they are not intended to be prescriptive mandates used for discipline or liability purposes. These new roles are still evolving, and there are significant legitimate variations in practice. Different professionals and programs are likely to strike different balances between competing policies, risks and benefits that make reifying a set of discretionary "best practices" as prescriptive mandates unwise and unfair.

California has failed to adopt legislation and court rules governing parenting coordination despite the growing use of these service models in our family courts. This leaves parents, parenting coordinators, courts, and licensing boards without clear directives about what practices are required or prohibited.

The Association of Certified Family Law Specialists (ACFLS)[3] submits this educational, non-advocacy amicus curiae brief to address the role of parenting coordinators in family courts. ACFLS takes no positions with regard to the specific facts that lower tribunals found to be the bases for disciplining appellant. Clearly parenting coordination failed to contain the conflagration for this family since, apart from this appeal, the Clerk's Transcript [I CT 135-164) contains the opinions issued by the First District in several of the *five* appeals from various family court decisions, including appeals from a motion to recuse the trial judge and an award of sanctions against the mother's attorney. Many of the problems encountered in this case appear to stem from careless structuring of the role in the appointment orders, and the absence of governing standards of conduct.

ACFLS's purposes in appearing as amicus are to protect and perfect the parenting coordination service model in California family courts, discuss the implications of the issues raised in this case for the future of parent coordination in California, and address the implications of those issues for other family court appointed neutrals including but not limited to child custody evaluators[4], minors' counsel appointed per Fam. Code §3150 et seq., mediators, therapists, members of collaborative family law teams, and other court appointed or connected quasi-judicial dispute resolution professionals.[5] We will review the parenting coordina-

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[3] Preparation of this brief was a volunteer effort by the ACFLS amicus committee.

[4] Referred to as "CCE's" in many of the journal articles cited herein.

[5] H*oward v. Drapkin* (1990) 222 Cal.App.3d 843, 855, 858-860

tion literature, and present many of the observations in the voices of their authors.

This Court should consider the public interest in encouraging professionals to accept parenting coordinator appointments so that the public and the courts benefit from the diversion of chronic custody disputes to this service. California's Supreme Court recently extended the mediation privilege to lawyers advising clients during the mediation process because the public policy in favor of encouraging mediation outweighs the public interest in protecting parties from attorney malpractice or protecting the public in attorney discipline proceedings. *Cassel v. Sup. Ct.* (2011) ___ Cal.4th ____, 11 DJDAR 658. There is a similar public policy interest in promoting use of parenting coordination that may outweigh other public policies relating to professional licensure and discipline.

II. Parenting Coordination Services Reduce Family Court Congestion and Reduce Adverse Impact of Parental Conflict on Children

> Parenting coordinator (PC) programs have gained widespread appeal in domestic relations courts across the country. Historically, high conflict cases made up only approximately 10% of all divorce cases but, unfortunately, they have taken up a disproportionately high percentage (up to 90%) of the family courts' resources [Citations]. Thus, courts are desperate to find programs to alleviate the burden these parents placed on the courts. Continued family conflict is also one of the most reliable predictors of myriad problems for children [Citation]. Compared to court hearings, PC programs are designed to be an efficient, less costly, less formal, less adversarial and less time-consuming method to resolve day-to-day co-parenting conflicts.
>
> Beck et al. (2008) *Parenting Coordinator Roles, Program Goals and Services Provided: Insights from the Pima County, Arizona Program* 5 J. of Child Custody 122, 123

California's overcrowded family courts struggle to provide quality adjudicative services with shrinking budgets. Recurring custody disputes place great demands on our family courts. In *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 259, the Supreme Court recognized that children's parenting plans may need frequent adaptation reflecting changes in age and developmental stage (ACFLS was one of the amici urging consideration of children's changing needs). The adjudicative model was not designed for this kind of incremental decisionmaking.

Parenting coordination programs can dramatically reduce family court caseloads. A California study found a 25-fold decrease in relitigation,

> In 1994, Terry Johnston, a psychologist and parenting coordinator in private practice, reported on the only study to date of 166 cases completed by 16 special masters in Santa Clara County. A comparison of court appearances the year prior to the appointment of a special master to the year after the appointment found that there were 993 appearances for these 166 cases in the one year previous to the appointment (an average of 6 court appearances per case) and 37 court appearances in the one year after the appointment (for an average of .22 appearance per case). This nearly 25-fold decrease in court appearances in the case sample provided compelling data

> to support the utility of the process in unburdening the courts of these high conflict cases.
>
> Coates, Jones et al (2003) P*arenting Coordination*: I*mplementation Issues* 41 Fam. Ct. Rev. 533, 534

A more recent study of a convenience sample (not randomly selected and without a control group) of 49 families diverted to a parenting coordination program resulted in 75% fewer child-related motions and 40% non-child-related motions. The authors noted, "These findings are substantial in terms of the time saved by all involved in the court system, including the judges, lawyers, support staff, and the parents themselves." (Henry et al. (2009) P*arenting Coordination and Court Relitigation*: A C*ase Study* 47 Fam. Ct. Rev. 682, 689)

Writing in the January 24, 2011 edition of The New Yorker, Atul Gawande describes how medicine is developing model programs to provide intensive preventative and ongoing care services to the 1% of the patient population that utilize 30% of the medical services offered by a hospital (Gawande (2011) "The Hot Spotters" T*he New Yorker* 40). The patients stay healthier, stop rotating through the emergency rooms, stop needed extended hospital stays, and their medical conditions stabilize or improve.

The parenting coordinator model plays the same pioneering role for family courts that these pilot "hot spot" programs play in medicine. The adjudicative model simply cannot provide the day-to-day coaching, incremental decisionmaking and other support services these families need. Post-judgment custody litigation is designed to address substantial changes in circumstances, not the equally significant and often corrosive "drip, drip, drip" of cumulative small problems, challenges and frustrations and incremental changes in the lives of the child and family that arise in implementing and adapting a parenting plan. Counseling isn't enough for many of these families.

High quality consensual dispute resolution programs can dramatically reduce adjudication caseloads. ACFLS advocates for expansion of quality con-

sensual dispute resolution services, including parenting coordination, in California's family courts. (ACFLS (2009) ACFLS Comments on Elkins Family Law Task Force's Draft Recommendations, ACFLS Newsletter Winter 2009 at pp. 17-18 (http://www.acfls.org/Elk/))

California's family courts need the reduction in family court filings that parenting coordination services provide. This consensual dispute resolution service is very effective for many families whose needs are not adequately met by the adjudicative model and whose repeated trips to court burden court budgets.

III. Parenting Coordinators Work With the Most Difficult Family Court Population – Those Most Prone to Assert Grievances and Challenge Decisionmakers

> ... cases are usually referred to parenting coordination because they are chronically litigious and difficult to manage. These parents have often had several attorneys, evaluators, and mediators -- professional hopping and shopping is rampant. Their court files are thick with motions, court appearances, and allegations of wrongdoing by the parents.
>
> Coates, Deutsch et al. (2004) *Parenting Coordination for High-Conflict Families* 42 Fam. Ct. Rev. 246, 252

The child custody cases referred to parenting coordinators are the most complex, acrimonious, difficult and demanding cases. Most parents regain their perspective and bearings within two years of separation, and do not need this kind of intensive and ongoing service model. Parents who continue to return to court with enforcement and modification requests after completing co-parenting educational programs, and after a child custody evaluation are candidates for parenting coordination,

> Parents who need a PC intervention are typically a special group for whom the passage of time has not reduced the rage and angry behaviors of at least one if not both parents. The 10–20% of parents who remain in entrenched and high conflict two to three years after separation/divorce are significantly more likely to have severe personality disorders and/or mental illness (Johnston & Roseby, 1997). Understanding the characteristics of parents with severe borderline, dependent, narcissistic, and antisocial personality disorders, why these parents react so strongly to rejection and loss, how the child is used in attempts to re-stabilize their functioning and punish the other parent, and how personality disorders are exacerbated by stress, conflict and the adversarial system will facilitate more effective work with these difficult clients.
>
> Kelly (2008) *Preparing for the Parenting Coordination Role: Training Needs for Mental Health and Legal Professionals* 5 Journal of Child Custody 140,149-150

Seeking modification of a parenting plan is not always evidence of pathology. Wise parents and courts recognize that changes in the child's age and

stage of development, family composition, geographic location, parental availability, parental work schedules, child's school and activity schedule and other normal and expected changes require adaptation of the parenting plan.

> The notion that one parenting plan will serve a child's best interests over his or her entire childhood, or will be practicable as daily life in the family changes, is unrealistic. Change is the nature of childhood. Families are dynamic, not static. Most parenting plans require adaptation or modification from time to time.
>
> Shear (2010) "Chapter 7: Parenting Plans" in CEB, *California Child Custody Law and Practice* §4.7 102

But healthy families are able to adapt their parenting plans outside of court, or return to court for modifications with moving papers that demonstrate a problem-solving attitude rather than blame and accusations. The cases referred to parenting coordination are qualitatively different.

Some cases assigned to parenting coordinators involve personality-disordered parents with rigid world views, limited collaboration and cooperation skills, and high levels of anger.

Parenting coordinators provide valuable services helping parents of infants, toddlers and very young children learn to co-parent and get off to a good start during a period when their children's needs change rapidly and parental emotions are high. Often these parents have never lived together, or lived together only briefly, so they do not have a history of collaboration to draw upon. Infants and toddlers benefit from frequent adaptation of their parenting plans reflecting their changing developmental needs and capacities. They need an opportunity to develop healthy attuned, attached and reciprocally connected relationships with each of their parents. Their parents also benefit from assistance in sharing information and coordinating care in each homes. New parents often have anxieties about the other parent and about the baby's care. In many cases, grandparents add further complexity to the mix.

Parenting coordinators also work with families where one parent's ability to care for the children may be compromised by episodes of mental illness or substance abuse so that ongoing assessment of the parent's ability to care for the children safely becomes part of the parenting coordinator's responsibility.

Still other cases are referred to parenting coordination because the child's special needs require case management of the various health care and educational service providers, resolution of disputes about health care and education, and coordination of caregiving in both homes.

While there is a growing body of research about custody arrangements (see, inter alia, Galatzer-Levy, et al. [Eds.] (2010) T*he Scientific* B*asis of* C*hild* C*ustody* D*ecisions*, (2nd Ed.)), that research is far from exhaustive, and the two most rigorous longitudinal studies suggest that individual variables may have a more powerful impact on outcome than the lessons of group data. (See Ahrons (2004) W*e're Still* F*amily*: W*hat* G*rown* C*hildren* H*ave to* S*ay* A*bout* T*heir* P*arents'* D*ivorce* and Hetherington and Kelly (2002) F*or* B*etter or for* W*orse*: D*ivorce* R*econsidered*)

Thus, it is easy for an angry and dissatisfied parent (or that parent's lawyers) to interpret the decisions of a parenting coordinator in any given case as shaped by improper factors,

> The lack of systematic research to begin to specify a standard of care in this emerging role makes practitioners vulnerable to critique from section1.04 of the American Psychological Association Ethical Guidelines, which reads, "In emerging areas in which generally recognized stand for preparatory training do not yet exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect patients, clients, students, research participants and others from harm." (American Psychological Association,1992).
>
> Sullivan (2004) E*thical, Legal, and Professional Practice Issues... supra* at 580

Moreover, broad prohibitions against bias prove difficult to apply in practice.

> Bias, and its legal counterpart, partiality, are perhaps the most frequent complaints levied against Special Masters (Lee, 1995). The two principles that can guide the evaluation of bias are sufficiently vague to be unhelpful in reviewing Special Master work. The first comes from the psychological paradigm. The relevant ethical principle that relates to this problem is section 1.06, which states that

> "psychologists rely on scientifically and professionally derived knowledge when making scientific or professional judgments or when engaging in scholarly or professional endeavors" (American Psychological Association, 1992). The difficulty with this standard is that judgments and decisions made by the Special Master are often simply based on reasonableness and not on any scientific or professional knowledge bases. With such inapplicable guidelines and lack of well-constructed research in this area to decide disputes, the Special Master must often rely on theory, clinical experience, and his or her own beliefs about what is best for children. This becomes fertile ground for personal biases to emerge in practice or more case specific biases created by the intense countertransference issues these cases generate for the Special Master (Lee, 1995).
>
> I*d.*

Differential treatment of parents is not necessarily evidence of bias on the part of the parenting coordinator,

> In a minority of cases, there will be one enraged, vindictive, and uncooperative parent initiating most of the conflict and disputes, and one parent, now emotionally disengaged, who is not fostering or continuing the conflict but is forced to deal with the disputed issues (Friedman, 2004; Kelly 2003, 2005). Decisions consistently "favoring" the better adjusted parent may be entirely appropriate in such cases. However, PCs more often work with two parents with continuing high anger and severe personality disorders, and the decisions of PCs are more likely to "favor" both parents at different times during their term of service.
>
> Kelly (2008) P*reparing for the* P*arenting* C*oordination* R*ole... supra* at p.145

Parenting coordination work is exacting and often exasperating. Parents frequently turn the animosity they express for one another on the parenting coordinator. In this case, that animosity was also directed at the trial court. [I CT 148-165]

> By virtue of the role, the special master becomes the container of almost all of the hostility in the family. While this is true in any interventive role in family law, it is exponentially greater in special master cases. The special master is the recipient of each complaint from family members, must assess each concern, and take action to resolve it. Even when the special master skillfully anticipates upcoming conflicts, s/he still maintains this central position in the family. We are the targets of the projected hostility of each family member.
>
> Each of us who have been special masters have had the experience of growing weary of the phone calls, e-mail, and letters from

> litigants, children, and attorneys complaining that we are not doing enough. I am not immune to the weariness that comes with this role.
>
> Beilin (2002) *Why I Am No Longer a Special Master*, AFCC California Chapter Newsletter Winter 2002 6

Beilin observes, "It is difficult for special masters to maintain our ability to maneuver within these highly conflicted families, often being consumed by the anger projected onto us. When we do, we are often viewed by the family as unresponsive, impotent, or aligned with the other parent."

Parenting coordination is a very intrusive model, inserting state authority into the daily family lives of parents and children. With those intrusive powers comes a duty to exercise restraint, discretion and wisdom.

This work often creates the perfect storm. Parenting coordinators struggle to avoid being triangulated into the family's conflicts. Some lose their objectivity or find their judgment compromised. Others lose their patience, and resort to harsh language and actions that further polarization and fuel a party's sense of righteous indignation.

Although parenting coordinators try to remain objective and professional, no matter how exasperating the parents' behavior may be, they don't always succeed.

> Functioning as a PC creates a number of clinical and personal issues that sometimes cause difficulties in judgment and professional behavior. Personal issues include succumbing to the power of the PC role, as evidenced by increasingly arrogant and omnipotent postures and decisions, experiencing high levels of anxiety about parental conflict and disputes, and responding angrily to clients' irrational, demanding behavior with highly punitive responses and decisions.
>
> ... Angry, demanding, irresponsible, seductive, polarizing parents create strong personal reactions in all of us, creating significant psychological and professional challenges in maintaining (or appearing to maintain) impartiality and objectivity in dealing with parents in all interactions (but not the outcomes). Too many cases, too little time, lack of self-awareness, and failure to examine one's professional, theoretical, and personal biases may contribute to the unjustified alignment of a PC with a parent which can result in failure to object-

ively gather and consider information that might lead to different decisions.

Kelly (2008) P*reparing for the* P*arenting* C*oordination* R*ole... supra* at p.154

High quality training, annual updates, and use of support or study groups for parenting coordinators, help parenting coordinators minimize risks and preserve their perspective and detachment.

IV. Balancing on the High Wire Without a Net: California's Parenting Coordination Lacks Enabling Legislation or Judicial Council Rules and Standards

> Model PC appointment orders in California have typically invoked the statutes and court rules governing the various components of the hybrid model, including judicial reference, mediation, child custody evaluation and appointment of an expert witness as the legal bases for the order. This is a dangerous practice because the PC process will not strictly follow the governing law for any of those components.
>
> ... Because California's statutory schemes for mediation, child custody evaluation, child custody counseling, and judicial reference have specific and mutually exclusive requirements, they cannot be merged to create a new model. While model PC orders have invoked the laws governing judicial reference, mediation, and child custody evaluation to lend the appearance of legitimacy to the process, that practice opens the door to court challenges on the grounds of noncompliance with the governing law for each of those models.
>
> Shear (2008) I*n Search of Statutory Authority..., supra.* at p. 91

The only thing that is clear about appointment of parenting coordinators in California is that family courts are without jurisdiction to make them without a stipulation. Moreover, no published case has upheld orders resulting from a stipulated appointment of a parenting coordinator. The absence of enabling legislation places both families and parenting coordinators at risk, since they use this process with no clear ground rules other than the terms of the often highly flawed appointment order. Better model orders are emerging.

In the early years, parenting coordinator stipulations typically cited a laundry list of inconsistent and inapplicable statutory schemes,

> In California there is no code that accurately describes the functioning of a Special Master which also addresses issues such as the more flexible gathering of evidence, the informality of the hearing process, and the mixed, functional role encompassed within this work. The Special Master concept as viewed within the family court system is a hybrid having some similarity to those roles defined in the codes pertaining to arbitrators, mediators, expert witnesses and guardian ad litem. The solution to this absence of an appropriate

code has been for courts to modify existing codes in stipulated orders.

Lee (1995) *Special Masters in Child Custody Cases* 14 Association of Family and Conciliation Courts Newsletter, No. 2

Of course, courts have no power to modify statutes. Statutes prescribe and proscribe what courts may do.

The California Constitution (art. VI, § 22) prohibits the delegation of judicial power except for the performance of subordinate judicial duties. A trial court lacks either statutory or inherent power to require the parties to bear the cost of a special master's services, even where it may have the authority to make the appointment. (*People v. Superior Court* (*Laff*) (2001) 25 Cal.4th 703)

The Court of Appeal reversed trial court orders delegating authority over the visitation schedule to a child custody evaluator, requiring one of the parents to participate in psychotherapy and requiring that all future custody matters be heard before the same bench officer in *In re Marriage of Matthews* (1980) 101 Cal.App.3d 811, 816–817 because there was no statutory authority supporting such a delegation.

In *Ruisi v. Thieriot* (1997) 53 Cal.App.4th 1197 (at pp. 1207-1208), the First District held that appointment of a child custody special master is an unconstitutional delegation of judicial responsibility,

> In family law matters, especially where the parties are unable to curb their animosity toward each other, the trial court may well find it advantageous to designate a separate forum to resolve the parties' differences. (*In re Marriage of Olson* (1993) 14 Cal.App.4th 1, 5, fn. 2, 8.) However, the authority of the trial court to do so is constrained by the basic constitutional principle that judicial power may not be delegated [FN] (Cal. Const., art. VI, §1; *In re Marriage of Olson, supra,* 14 Cal.App.4th at p. 7 [appointment of accountant as special master to determine parties' income and to calculate spousal support month-by-month was an improper delegation of judicial authority.
>
> The trial court has no authority to assign matters to a referee or special master for decision without explicit statutory authorization.[FN] [Citations] An invalid reference constitutes jurisdictional error which cannot be waived. [Citations]

Early stipulations and orders appointing parenting coordinators in California expressly invoked statutes establishing family court services mediation, private mediation, judicial reference, child custody evaluation, arbitration and expert witness statutes as the authority for the appointment. Today some stipulations, including the one used to appoint Rand [IV CT 1110-1121], invoke Code Civ. Proc. §638 but fail to comply with the other requirements for a reference in California. Others, like the stipulation developed by the Los Angeles County Bar Family Law Section, opt not to invoke any statutory authority, disclose the absence of enabling legislation and provide structure and clarity.

Masters and referees perform "subordinate judicial duties" within the meaning of the state constitutional provision authorizing the legislature to permit the appointment of officers and commissioners to perform subordinate judicial duties, only if their findings and recommendations are advisory and not binding until adopted by the court; the court independently must review the referee's proposed findings and conclusions. Most parenting coordination appointment orders make some decisions of the parenting coordinator binding when issued.

California Code of Civil Procedure §638 et seq. and the corollary rules of court provide for voluntary delegation of judicial fact-finding or decision-making functions to a referee. Under §638, the referee follows the same formalities that a trial judge must follow. The California Evidence Code applies in those proceedings. Parenting plan coordinators do not conduct formal hearings. They routinely have unilateral contact with parents, counsel, witnesses and the children in the case.

The R*uisi* court (*supra* at pp. 1208-1210) concluded that appointment of a child custody special master without a stipulation fails as either a general or special reference. The decision holds that it fails as a general reference since the subject matter of the reference is not authorized by §639. The Court also

noted that §639 simply does not contemplate reference of future issues and conflicts.

The reference statutes simply do not contemplate a process that even vaguely resembles parenting coordination. The judicial reference statutes do not authorize a referee to also assume expert witness, mediation or parent educator duties, or to combine any other function with the duties of a referee. Just as a judge or court commissioner cannot serve multiple roles in a case, a referee appointed under the statute must be constrained to a single role.

The informal special master process does not meet the statutory requirements for judicial reference,

> [A referee is] appointed by the court for the decision of particular matters inconvenient to be heard by the judge and such a reference is a quasi judicial proceeding (22 Cal. Jur. 685). It would seem axiomatic that a referee cannot make decisions based upon information or matters which would be inadmissible before court
>
> R*ice v*. B*rown* (1951) 104 Cal.App.2d 100, 103

The R*ice* court (at p. 107) held that a referee has no powers greater than those of the appointing court, observing that nothing in Code Civ. Proc. §§638–639 refers to vesting a referee with power to make findings not based on evidence regularly admitted at the hearing, and observed, "We have repeatedly held that a trial before a referee should be conducted in the same manner as though it was had before a court. [Citation]"

Orders invoking judicial reference must differentiate between a general and a special reference. A general reference transfers the entire case to the referee to decide, and the referee's decision must be entered as the decision of the court. There is no provision by which a party can ask the trial court to consider the matter de novo.

A parenting coordination order does not qualify as a general reference because it refers only the child custody issues to the parenting coordinator, leaving economic and other post-dissolution matters to the court. Nonetheless, the First District Court of Appeal hearing a challenge to Rand's authority

in the family law action relied on Code Civ. Proc. §638 and deemed Rand a referee. [I C.T. 138, 140-143] Review of this model needs greater rigor.

Parenting coordination orders fail as a special reference to the extent that they purport to make any decisions of the parenting coordinator binding. Decisions made pursuant to a special reference are only advisory (Code Civ. Proc. §644(b)). Similarly, the express provisions in Code Civ. Proc. §639 for appointment of discovery referees and referees to render an accounting provide no statutory support for appointment of a parenting coordinator, as the R*uisi* court observed.

Evidence Code §730 and Fam. Code §§3110 et seq. don't fare any better as the bases for appointment of a parenting coordinator although many California parenting coordination orders have invoked them.

Parent coordinators are coaches, case managers, mediators and decisionmakers, not opinion witnesses. Evidence Code §730 simply provides no authority supporting appointment of a parenting coordinator. Orders appointing parenting coordinators and the parenting coordination process do not comply with Calif. Rules of Court, rule 5.220's uniform standards for the child custody evaluation process. Moreover, lawyers, retired judicial officers, and non-evaluator mental health professionals may serve as parenting coordinators, but do not meet the qualifications for a child custody evaluator under the California Family Code or under Calif. Rules of Court, rule 5.225.

The order appointing Rand also invoked Fam. Code §3160 et seq.) [IV CT 996], but the First District found that provision inapplicable. [I CT 142]

At the time that Rand was appointed and served, Fam. Code §3183 allowed counties to require recommending family court services mediation. A.B. 939 amended the statute to "re-brand" this service as "child custody recommending counseling" and require written recommendations, rather than reforming the service to separate mediation from brief assessment as both ACFLS and the Elkins Family Law Task Force had urged.

Although parenting coordinators use mediation methods to help parents reach agreements, California's Family Code and Evidence Code mediation statutes don't fit the parenting coordinator model either. Mediation is governed by statute in California (Evid. Code §§1115 et seq.). Absent an express waiver, mediation is confidential (Evid. Code §§1119) while parenting coordinators make findings and orders, and can be called to testify. The two defining characteristics of California's mediation statutes are confidentiality and voluntary self-ordering. In fact, the two go hand-in-hand – one of the reasons mediation in California is confidential is to prevent coercive mediation with the express or implied threat that the mediator will report to the judge. In California, the role of a mediator is not that of a decision-maker. (1997 Law Revision Commission Comment to Evid. Code §1121; *Foxgate Homeowners' Ass'n, Inc. v. Bramalea California, Inc.* (2001) 26 Cal.4th 1)

Stipulations and orders appointing parenting coordinators rarely invoke the arbitration statutes, even though those statutes provide the best fit and the most flexibility in consensual structuring of the process. The failure of an agreement to identify the grievance procedure as "arbitration" is not fatal to its use as a binding mechanism for resolving disputes between the parties. Courts look to the nature and intended effect of the proceeding. (*Cheng-Canindin v. Renaissance Hotel Associates* (1996) 50 Cal.App.4th 676, 683–684) Consequently, parenting coordination orders that cite no authority for the process may be governed by the contractual arbitration statutes and cases.

Contractual arbitration does not require formal proceedings – the essential elements are a third-party decision-maker chosen by the parties, a mechanism to ensure neutral decisionmaking, opportunity for both parties to be heard, and a binding decision (Ibid at 684–685). Contractual arbitration has the advantage of offering statutory civil immunity to the arbitrator (Code of Civ. Proc. §1280.1), as well as common law civil immunity.

Evidence Code §703.5 bars most court testimony by any arbitrator, mediator, or person presiding over a quasi-judicial proceeding (with an exception for court-connected family law mediation). However, parties are free to stipulate to the admissibility of otherwise inadmissible evidence. Orders appointing a parenting coordinator should contain such waivers if the parties want the parenting coordinator to testify.

Orders appointing a parenting coordinator must spell out clear procedures to be enforceable as arbitration agreements. See *Lindsay v. Lewandowski* (2006) 139 Cal.App.4th 1618 where an agreement for binding mediation that set forth no clear procedures failed to meet the requirements for enforcement as a contractual arbitration agreement.

California's appellate courts have recognized that the state has a strong interest in encouraging use of arbitration and other forms of consensual dispute resolution to resolve marital property issues. See *In re Marriage of Cream* (1993) 13 Cal.App.4th 81. But does that policy extend to child custody issues?

No published appellate decision tells us whether parents may delegate best-interests determinations to a parenting coordinator by agreement. Child custody and visitation cases involve more than the rights of the parents — they involve the state's independent interests in child welfare. The extent to which parents can limit the power of a family law court to override any agreement relating to children's best interests is uncertain, particularly in the absence of specific authorizing legislation.

Parents may not stipulate to arbitrate future child support disputes because they deprive the court of jurisdiction to modify support.

> It is true that parties may settle their disputes over child support by agreement. This state has a "strong policy favoring settlement of litigation" over family law disputes. [Citations] Nor was there anything unlawful about the parties' mutual decision to allow a third party to help them settle future disputes. But such agreements, to the extent that they purport to restrict the court's jurisdiction over child support, are void as against public policy. [Citations] Children have the "'right to have the court hear and determine all matters

> [that] concern their welfare and they cannot be deprived of this right by any agreement of their parents.'" (I*n re* M*arriage of* L*ambe &* M*eehan* (1995) 37 Cal.App.4th 388, 393, 44 Cal.Rptr.2d 641.) Thus, these agreements are not binding on the children or the court, and the court retains jurisdiction to set child support irrespective of the parents' agreement. (I*n re* M*arriage of* B*ereznak and* H*eminger* (2003) 110 Cal.App.4th 1062, 1068–1069)
>
> Shear (2008) I*n* S*earch of* S*tatutory* A*uthority*, *supra* at pp. 95-96

Until the Legislature enacts a parenting coordination statute, legal support and jurisdiction for appointment of a parenting coordinator remain uncertain.

V. Discipline of Family Court Appointed Psychologists – California Board of Psychology Conflates Aspirational Practice Guidelines With Governing Legal Standards

This appeal arises from discipline of a licensed psychologist. But California family courts regularly appoint lawyers, social workers, marriage and family therapists, and psychiatrists (and occasionally appoint unlicensed persons including clergy and other individuals respected by the parents) as parenting coordinators. Each of these professionals does the same job, but each is governed by a different body of law, and different approaches and standards for professional discipline.

If licensing bodies have unfettered jurisdiction to discipline family court-appointed quasi-judicial dispute resolution professionals, than these different professionals doing the same job will be subject to very different standards. Some parenting coordinators will have to comply with competing codes of conduct and risk facing duplicative, but potentially inconsistent disciplinary proceedings.

In the case of psychologists, the situation is further complicated because the Board of Psychology goes outside the statutory standard to us guidelines that were adopted as merely advisory as the mandatory minimum standard of care for psychologists conducting child custody evaluations. It appears likely that they will take the same stance with respect to parenting coordinators.

Business & Professions Code §2936 incorporates the American Psychological Associations' (APA) Ethical Principles of Psychologists and Code of Conduct (adopted 2003 and amended 2010) [http://www.apa.org/ethics/code/index.aspx] by reference as the standard of conduct for California psychologists, but does not incorporate various "best

practices" guidelines promulgated by the APA as required standards for California psychologists.

The APA also has adopted practice guidelines for child custody evaluation (www.apa.org/practice/guidelines/child-custody.pdf). The Board of Psychology erroneously treats those elective practice guidelines as the standard of care for child custody evaluations, and treats deviation as from those guidelines as providing the basis for loss of a psychologist's license and livelihood.[6]

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[6] The Board of Psychology website (http://www.psychboard.ca.gov/faq.shtml, accessed 1/24/11) contains the following FAQ describing this practice:

> **21. Does the Board of Psychology handle complaints involving psychologists who perform child custody evaluations?**
>
> The Board of Psychology is required to review and to make a determination on every consumer complaint received regardless of the subject matter of the complaint. Child custody cases in the Family Court can be very contentious and volatile. Frequently, at least one of the parties involved in such cases is displeased about the outcome of the court's decision regarding custody of children. Rule of Court 1257 requires each county in California to establish a grievance process to resolve complaints from involved parties in Family Court cases. Compliance with this rule is not uniform among the courts. This being the case, the dissatisfied parent in a Family Court case often resorts to filing a complaint with the Board of Psychology against the evaluating psychologist. The board has each such complaint reviewed by at least one licensed psychologist who has expertise in Family Court issues. Keep in mind that the Board of Psychology has no authority to change the findings and decision of a Family Court judge regarding custody of children. What the board can do is to have each complaint against a psychologist who has provided an evaluation in a child custody case reviewed by an expert to determine whether the evaluation was conducted pursuant to the Code of Conduct and Ethical Principles and to the Guidelines for Child Custody Evaluations in Divorce Proceedings established by the American Psychological Association (APA). These guidelines establish the standard of care for the practice of psychology. Pursuant to section 2936 of the Business and Professions Code, the board must apply APA standards as the accepted standard of care in all enforcement policies and disciplinary case evaluations. Therefore, if a child custody evaluation is determined to have been conducted within this accepted standard of care, the Board of Psychology cannot take administrative action against the psychologist performing the evaluation. If it is determined that an evaluation was performed outside of this standard of care, then the board has the authority to continue

But the APA Guidelines, *supra*, expressly prohibit their use as the governing legal standard, noting that "Guidelines differ from *standards* in that standards are mandatory and may be accompanied by an enforcement mechanism,"

> ... The term *guidelines* refers to statements that suggest or recommend specific professional behavior, endeavors, or conduct for psychologists. Guidelines differ from *standards* in that standards are mandatory and may be accompanied by an enforcement mechanism. Guidelines are aspirational in intent. They are intended to facilitate the continued systematic development of the profession and to help facilitate a high level of practice by psychologists. Guidelines are not intended to be mandatory or exhaustive and may not be applicable to every professional situation. They are not definitive, and they are not intended to take precedence over the judgment of psychologists.

The Board of Psychology FAQ webpage makes no mention of Cal. Rules of Court, rules 5.220, 5.225, 5.230 and 5.235 governing child custody evaluations except to note the existence of Superior Court grievance procedures with a citation that has not been updated to reflect the current rules and their numbering scheme. But the Judicial Council rules, unlike the APA practice guidelines, are mandatory requirements for child custody evaluations. This deviation from law in disciplining child custody evaluators does not inspire confidence about the standards the Board of Psychology applies to parenting coordinators.

There are no APA practice guidelines and no Judicial Council rules for parenting coordination. No such practice guidelines or rules existed when Rand was appointed, or when he was disciplined. Due process does not permit drastic remedies that affect professional licenses and livelihoods to be

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> with appropriate administrative action. Such action may include an intense educational review with the evaluating psychologist or formal administrative discipline against the psychologist's license depending on how extreme the departure from the standard of care was and on the amount of consumer harm that may have occurred as a result of the departure. The board's action will have no effect on the findings and decision of the Family Court judge regarding the custody of the children involved in the case.

based on uncertain and indeterminate standards. There is no consensus about what standards, as opposed to discretionary balances of competing practices, govern parenting coordinators. Parents and parenting coordinators need to know what is expected of each of them.

The APA has presented trainings for parenting coordinators, and is in the process of developing and adopting parenting coordination guidelines,

> Parenting coordination is a relatively new field and research is greatly needed regarding its effectiveness (Bacher, Fieldstone, & Jonasz, 2005). For families involved in high-conflict custody disputes, children and their welfare often lie in the hands of family court judges, attorneys, and custody evaluators (Mitcham-Smith & Henry, 2007). A need exists for a new method of intervention for these families that blends the role of the court with the role of a counselor and a family mediator. The rapidly growing popularity of parenting coordination has arisen from this need, given that parenting coordination is a multi-disciplinary role that requires specialized psychological and legal knowledge, as well as mediation and arbitration skills. A parenting coordinator is a highly skilled professional who is agreed upon or court-appointed to help high conflict parents cooperate and collaborate regarding the care of their children and to reduce the amount of damaging conflict to which these children are exposed (Deutsch, 2008; Kirkland & Sullivan, 2008). As the practice of parenting coordination continues to expand and develop, requirements for standardizing this practice increase. The Parenting Coordination Task Force of the Association of Family and Conciliation Courts (AFCC) has developed guidelines for the practice of parenting coordination to offer guidance in best practices, qualifications, training, and ethical obligations for parenting coordinators (AFCC Task Force, 2006). In addition, the APA is currently developing guidelines on parenting coordination that are intended to provide a more specific framework for psychologists who practice in this area.
>
> American Psychological Association (2010) T*he* P*arenting* C*oordination* (PC) P*roject ... supra*

The Association of Family and Conciliation Court (AFCC) adopted its Guidelines for Parenting Coordination (http://www.afccnet.org/resources/standards_practice.asp) in 2005. AFCC expressly classified its guidelines, like the guidelines adopted by the American Psychological Association, as not mandatory and prescriptive. AFCC describes

the guidelines as "aspirational in nature" and "not intended to create legal rules or standards of liability."

Some California counties have adopted local rules governing parenting coordination. Those rules tend to be very simple, and do not contain standards of conduct for parenting coordinators. The absence of statutes and court rules leaves the stipulation and order appointing the parenting coordinator as the sole governing document, unless the professional codes of ethics for the parenting coordinator's licensed profession apply. Professional ethics codes were not drafted with the role of parenting coordinator (or any other form of quasi-judicial dispute resolution) in mind.

VI. Parenting Coordination Programs Must Be Structured to Protect Parenting Coordinators from Being Triangulated Into the Family Conflict

> Some of the most frequent reasons given for removing a PC are the following: allegations of bias, creation of conflict with the coordinator by refusing payment of the bill for services, or setting up conflict on implementation of the parenting plan by refusing to compromise or cooperate.
>
> Coates, Deutsch et al (2004) P*arenting Coordination for* H*igh-Conflict* F*amilies supra* at p. 256

> Kirkland and Kirkland (2006) present a dozen standards for PC's and in the process make the observation that PC is not for everyone. Specifically, these research practitioners note that there are some post-judgment co-parenting dyads that are not suitable for PC because they are inextricably locked in pathological levels of high conflict and/or violence and have no true interest in improving their parental relationship. This observation quickly leads to questions about how to terminate the PC relationship. In addition, the issue of terms of service quickly surfaces. There must be a way for the PC to terminate involvement in certain cases and there must be a method of objective review of PC conduct by the court. As mentioned above, the point has been made from multiple practitioners from multiple jurisdictions that some pathological and/or manipulative PC clients will attempt to have PCs removed from their case simply because they disagree with a PC position/decision and/ or because they cannot manipulate the position of the PC. The court-sanctioned authority of the role needs to be defined and strong enough to meet and defeat any such challenge, but the role also has to be fully accountable to external review by the appointing court. In 2004, Matthew Sullivan observed that a "myriad of professional agencies" may potentially review the work of a PC. The first locale of review should be the court of jurisdiction, the appointing authority in the case, rather than allowing a manipulative PC client to 'do an end around' that particular PC by filing a lawsuit or a board/professional association complaint.
>
> Kirkland and Sullivan (2008) P*arenting Coordination* (PC) P*ractice, supra* at 631

Dissatisfied parents often look for ways to undermine the authority of a parenting coordinator who refuses to align with that parent. The strongest tools such parents have to checkmate the decisions of a parenting coordinator are withholding payment, or filing complaints. Parenting coordination stipulations should be structured to anticipate and prevent use of those tactics to

sabotage the parenting coordination, while protecting families from unprofessional conduct by parent coordinators. In other words, the challenge for family courts is to find ways to protect parenting coordinators from angry and vengeful parents, while protecting parents from parenting coordinators whose conduct fails to meet professional standards.

Some jurisdictions have done a better job developing these stipulations than others. Parenting coordination must be structured for success and preservation of the independence and authority of the parenting coordinator. The structure needs to include informed consent and waiver of formal proceedings, prepayment of fees for all services and a deposit to cover final orders and report if one or both parties stop paying, clear delineation of powers and procedures, and a grievance procedure.

This case arises from Sonoma County, which has a local rule governing appointment of child custody special master teams, and also permits parties to stipulate to appointment of individual lawyers and mental health professionals as special masters.[7] The Sonoma local rule contemplates that the indi-

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[7] Sonoma County's local Family Law rule E. 2. (effective 1/1/11) provides,

> 2. Appointment of Special Master
>
> a. If the parties request an appointment of a Special Master Team (hereafter "Team") the parties or their attorneys, if represented by counsel, shall contact the proposed mental health and attorney members of the Team to obtain his or her consent to act as a Team. The Team may only be appointed by agreement of both parties and upon each Team member signing the Appointment of Special Master Team Stipulation, Sonoma County Local Form FL- 030 and the attorneys for the parties signing The Role of the Attorney's document, Sonoma County Local Form FL-031. Any requested modifications to the provisions of the local forms must be approved by each Team member. A Stipulation and Order for Appointment of Special Master Team may only be submitted to the Court for approval and signature after obtaining the confirming signatures of the mental health and attorney members of the Team.
>
> b. Parties choosing to appoint an individual mental health professional or attorney to act as a Special Master shall use the same process as set forth at paragraph 9.16.H.1, except that they shall contact the proposed individual Special Master to obtain the Stipu-

vidual parenting coordinator will supply the stipulation. Sonoma's local rule is brief and vague, leaving all substance to the terms of the appointment stipulation and order.

The more vulnerable the parenting coordinator is to collateral attack on his authority, the less effective the service will be,

> Without authority, the PCs are likely not to be effective in providing the structure necessary to manage the conflict in these families. Resisting or challenging the PCs' authority was consistent with the manner in which these couples have previously related to each other as well as the courts. The PC can become the target of hostility from litigants, attorneys, family members and children, and some PC's have found that it is not the work for them (Beilin, 2002).
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> Beck et al. (2008) P*arenting Coordinator* R*oles... supra* at p.135

While some counties, including Marin[8], Los Angeles[9], and Sacramento[10], have developed detailed model appointment orders through local bench-bar

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> lation and Order to Appoint Special Master used by that individual as Sonoma County Local Form FL-030 is not applicable to individual appointments. An individual Special Master may not be appointed until that individual has consented to the appointment by signing a Stipulation and Order containing the terms of the appointment.
>
> c. A list of participating members of the Special Master Team will be maintained by the Judicial Assistant of the Supervising Family Law Judge.

[8] Marin County Superior Court's local rules including the following rule governing parenting coordinators,

> 6.33 PARENTING COORDINATOR The Marin County Superior Court permits parties, by stipulation only, to agree to the appointment of a Parenting Coordinator.
>
> A. Authority of Parenting Coordinator. No Parenting Coordinator will have authority to make orders on subjects which are, by law, reserved to the Court for adjudication, such as substantial changes in time sharing arrangements, an award of physical custody, an award of legal custody, or orders which substantially interfere with a party's contact with his/her children.
>
> B. Format of Stipulation. The Court has approved a form "Stipulation and Order re Appointment of Parenting Coordinator" for use in such cases. Any parties stipulating to appointment of a Parenting Coordinator must follow the format of this form order. A copy of the form order is available upon request in the Clerk's Office. [Adopted effective 5/1/98; amended 7/1/09]

cooperation, family law bench officers in other counties fail to even differenti-

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[9] The Los Angeles County Bar Association Family Law Section's model Parenting Plan Coordinator appointment stipulation is posted at http://www.lacba.org/redirector.cfm?LinkID=43022&LinkURL=http%3A%2F%2Fwww.lacba.org%2FFiles%2FMain%2520Folder%2FSections%2FFamily%2520law%2FFiles%2FPPC%2D1Stipulation2007.pdf. LACBA developed an earlier version of the stipulation in 2001.

[10] Sacramento County also has a local rule governing child custody special masters,

> 14.17 Stipulations for Use of Special Master in Child Custody Cases.
>
> (A) A special master designates the person appointed pursuant to Code of Civil Procedure section 638 in family law custody cases to make decisions about custody-related issues other than decisions involving the substantial modification of legal or physical custody. Use of a special master is intended as an alternative to frequent, continuing custody litigation. The special master may be a mental health professional or attorney. The court will publish a list of individuals who possess the minimum qualifications deemed appropriate by the court to serve as a special master and will provide, upon request, a packet of materials with more specific information about appointment of a special master.
>
> (B) Parties may use a special master by agreement and written stipulation and order only. Upon execution of a stipulation appointing a special master that includes a specific time period during which parties agree to participate with the special master, the court shall enforce such a stipulation for the time period designated by the parties.
>
> (C) Upon appointment of a special master by stipulation of the parties, the special master may make decisions which, in the absence of an objection raised by a party by timely filing an order to show cause or notice of motion with the court as more specifically set forth in the stipulation appointing the special master, will have the effect of a court order.
>
> (D) A "sample" special master stipulation will be available upon request. Although parties may develop individual stipulations appointing a special master, any stipulation, to be enforced by the court, must include the following specific provisions: (1) A grievance procedure which conforms to the procedure set forth in the sample special master stipulation; (2) A term of appointment; (3) A definition of the scope of authority of the special master; (4) A statement of quasi-judicial immunity; (5) A hearing process; (6) A decision process; and (7) An agreement for payment of fees charged by the special master. (Amended effective 1/1/11)

ate between the role of a parenting coordinator and other quasi-judicial dispute resolution roles.

For example, a Ventura County family court recently issued the following order without obtaining a stipulation from the parties, and without clearly thinking through the task or tasks assigned to the appointee,

> Dr. [name omitted] is appointed an Evidence Code §730 Expert to render a report as may be ordered, to testify as an expert as a parenting plan coordinator, ongoing recommending mediator, an advisor to evaluate the effectiveness of the therapy and counseling of each party and the minor child and to coordinate treatment between the counselors and therapists. Dr. [name omitted] shall have access to each parent, the minor child and each of the therapists or counselors.

Other counties have used astonishingly broad parenting coordination stipulations. For example, consider the stipulation at issue in the *unpublished, uncitable*[11] case of I*n re* M*arriage of* B*okor* (2006) Not Reported in Cal.Rptr.3d, 2006 WL 3072452. The parents of a preschooler entered into a stipulation appointing a parenting coordinator who would remain in place throughout the child's minority, had broad authority to make decisions on issues not presented to her for decision by either parent, and who could compel and force the parties to pay for whatever sessions or services the parenting coordinator demanded.

The first component of a parenting coordinator appointment is *voluntariness* – only parents who knowingly and intelligently waive the protections of the adjudicative model and elect parenting coordination should be diverted into parenting coordination programs. Parents forced to submit to parent coordination are unlikely to make good use of the process, and highly likely to look for ways to challenge the appointee. A parent who elects parenting coordination is more invested in the success of the program. A parent who voluntarily waives due process protections in exchange for a more direct and intensive

[11] We refer to this unpublished case for the sole and extremely limited purpose of giving an example of trial court practices, and not as any form of authority, citation or reference to the appellate court's analysis.

relationship with the decision-maker and incremental decisionmaking is more likely to understand and appreciate that trade-off.

> Most often the PC serves upon stipulation of the parents and/or formal order of the court and this is what provides the authority to the PC for the work to be done. This manner of appointment is viewed as a Best Practice (see [AFCC] Guideline VII, 2006). In some jurisdictions, judicial authority cannot be delegated in custody and access decisions, and PC's receive their authority through private consent agreements between the parents (see Fidler, this issue, for discussion of Ontario, Canada authority and practices). While in some jurisdictions judges can order a PC over the objection of a party, this practice is increasingly seen as inappropriate or unconstitutional and many experienced PC's believe this not only results in higher parental resistance to the PC process but also increases the likelihood of licensing board complaints."
>
> Kelly (2008) P*reparing for the* P*arenting* C*oordination* R*ole ... supra* at p.146

Coates, Deutsch et al. suggest that the risk of grievances increases when the parenting coordinator has decisionmaking (as opposed to recommending) authority without the specific agreement of the parents to vest the parenting coordinator with those powers,

> The granting of arbitration powers to the PC, although often helpful in expediting resolution of minor disputes, can also carry a risk of a request for removal because of dissatisfaction with the decision. Thus, including this clause in the order of appointment should be carefully considered and probably only utilized where both parties agree to the grant of this power and have some reasonable potential for modest cooperation. The PC is more likely to avoid a challenge by being open and advising parties of their right to ask for a discharge of the PC at the beginning of the process, and by making certain that the process does not become an adversarial battle between the PC and one of the parties. If there is a court hearing on a motion to remove the PC, the greater the adversarial relationship between the PC and one party (however irascible), the more likely the court will conclude that the PC has lost his or her effectiveness and feel that removal is necessary.
>
> Coates, Deutsch et al. *supra* at p. 256

Parenting coordinators, parents and courts need certainty about jurisdiction over parenting coordinators, and remedies for errors and misconduct. The jurisdictional issues and policy considerations are quite similar for other court-appointed neutrals such as child custody evaluators and minors' counsel.

In California, the appointment order is the universe of the powers, procedures and duties of the parenting coordinator. Are the appointment order's provisions governing grievances against the parenting coordinator controlling? They certainly play a strong role in shaping the expectations of the parties, and may have a material impact on the decision to enter into the stipulation. By signing the appointment order, and accepting the appointment on those terms, parents and their parenting coordinator expressly consent to a particular grievance process.

Here the Sonoma County appointment order specifically indicated that Appellant's services were engaged because he is a licensed mental health professional, and the appointment order spelled out a three-tier grievance procedure that culminated in complaint to licensing board. Having accepted appointment on those terms, he may be estopped from challenging the provision for review of his conduct by his licensing board. But such a holding would not address the important broader questions about jurisdiction over parenting coordinators and other family court neutral quasi-judicial dispute resolution professionals in California.

The AFCC Parenting Coordination Guidelines address structuring the grievance provisions of an order appointing a parenting coordinator,

> 5. Parent Grievances Regarding the PC and Objections to Recommendations and Decisions: When PCs are appointed by the court or by consent agreement, it is important that the order contain clear language and procedures to handle parent grievances regarding the PC and to handle parent objections to the PC's recommendations and decisions, including wishes that the PC be removed. Some orders include language that indicates that the PC can be removed or disqualified on any of the grounds applicable to the removal of a judge, referee or arbitrator. It has been found to be helpful to articulate a series of steps for managing such grievances, which may stem from PC's acting in an unprofessional manner or may arise from anger about the PC's recommendations or decisions which were not favorable to the complaining party. These procedures have been developed to protect PCs from unfounded complaints to the professionals' licensing boards and also to provide parents with sanctioned avenues for seeking redress.

> One grievance model requires that the complaining parent first set up and attend an appointment with the PC to discuss the grievance, prior to initiating any court proceedings for removal or complaining to the licensing board, in an attempt to resolve the grievance If no resolution is reached, both parents and the PC then attend a judicially supervised settlement conference prior to any action being taken. The court reserves jurisdiction to determine if the PC's time and expenses should be reimbursed in part or totally, including any attorney's fees incurred by the PC. If either the complaining party or the PC believes that the complaint cannot be resolved, either party can file a motion to the court to terminate the PC's services. The judge is the final gatekeeper on the grievance process unless there is a PC certification body. As an arm of the court with judicially delegated authority, PC's should be afforded quasi-judicial authority and immunity to protect them from lawsuits.
>
> Association of Family and Conciliation Courts (2006) G*uidelines for* P*arenting* C*oordination* 44 Fam. Ct. Rev. 164, 177-178 (Appendix B)

Complaints to licensing agencies punish serious misconduct and protect the public, but provide no concrete remedy for the complaining party. In the case of discipline for misconduct in the role of a court-appointed neutral, licensing tribunals should be required to either adopt or give great weight to the findings of the appointing court. Court appointees answer to the appointing judge, and the appointing judge is in the best position to provide supervision and engage in contextual fact-finding. Licensing board deference to the appointing judge would also reduce the number of meritless licensing complaints and serve the goal of promoting consistent standards and results. Another option would be to limit licensing complaints to those cases in which the appointing judge found that the appointee had engaged in serious misconduct or negligence.

Parenting coordination appointments need to be carefully structured to minimize situations where the parenting coordinator occupies an adversary or defending position to one or both parents. The fee provisions of the stipulation appointing Rand put the parenting coordinator in the position of issuing orders awarding himself fees and then having to enforce those orders for his

own benefit from a defaulting parent, thereby building an actual conflict of interest and source of bias into the very structure of the appointment.

Rand should not have been in the position of doing any work for which he was not pre-paid, much less retaining counsel to collect unpaid fees. It is wiser to structure the arrangement so that the court and the parent who wants the services of the parenting coordinator to continue are responsible for getting the parenting coordinator's retainer refilled. The parenting coordinator must remain above the fray.

This structural bias dilemma arises for other family court-appointed quasi-judicial neutrals as well, including minors' counsel and child custody evaluators. Most child custody evaluation appointment orders require prepayment and require full payment before the evaluator releases the report or appears to testify in court or at deposition. But court-appointed lawyers representing children in family courts are often forced into an adversary relationship with the parents of the children they represent. ACFLS pointed out this problem in our Comments to the draft recommendations of the Elkins Family Law Task Force – our observations apply with equal force to parenting coordinators,

> Requiring minors' counsel to collect fees directly from the parents creates a real and prejudicial conflict of interest. We are aware of cases that have been stayed under the disentitlement doctrine, because of the failure of a party to comply with orders to pay minors' counsel. We are aware of parents who say that they have been threatened by minors' counsel that counsel will recommend a change of custody if minors' counsel's fees are not paid. The Court must protect families against this kind of conflict.
>
> Minors' counsel's rates should be set by the court, and the court should approve each bill and determine the amount to be paid and respective responsibility between the parents. The Court is an institution with established collection mechanisms for fines and other charges – private practitioners are not. Moreover, the many challenges associated with enforcing fee orders deter many good lawyers from accepting this work.
>
> We are puzzled by the reference to directly billing parents. Until the Court takes over the role of paying minors' counsel and billing the parents, minors' counsel should make a fee motion, and the

court should determine the amount to be paid and respective responsibility between the parents.

ACFLS (2009) ACFLS *Comments on Elkins Family Law Task Force's Draft Recommendations*, *supra* at pp. 17-18 (http://www.acfls.org/Elk/)

While the structure of the payment arrangements cannot be blamed for Dr. Rand's imprudent decision to employ one parent's lawyer to represent him against the other parent, the risk of significant actual bias was built into the appointment order and the financial arrangements. One cannot stay neutral when trying to collect payment for one's hard work. It is one thing to observe a parent's bad behavior, and it is another to be the victim of it.

VII. Concentrate Grievance Procedures in the Appointing Court and Require Licensing Agencies to Defer to Appointing Court's Findings

The Sonoma County order appointing appellant as a child custody special master specifically invokes licensing discipline procedures. Marin County's stipulation contains similar provisions. Other counties have taken the opposite approach. For example, the model order for appointment of a "parenting plan coordinator" (PPC) developed by the Los Angeles County Bar Association Family Law Section, *supra*, provides,

> I understand that we cannot sue the PPC; that the PPC process is a quasi-judicial process; that the participants, including third persons, are protected from civil liability by the Civil Code Section §47 litigation privilege, as well as common law civil immunity from lawsuits to the broadest extent permissible under the law. The procedures set forth in this stipulation and order for addressing grievances about the PPC decision-making process and decisions are the sole remedy for complaints about the PPC available to us.

The section on grievances vests the appointing court as the sole venue with jurisdiction over grievances against the parenting plan coordinator,

> L. Grievances, Disqualification, Termination of Appointment
>
> 86. If either parent has a concern about the PPC's behavior in terms of ethics, professionalism, fairness, cost or procedures or any other concern, that parent must make reasonable efforts to resolve the grievance with the PPC before making a motion to have the issue adjudicated or the PPC removed.
>
> 87. The Court reserves jurisdiction to make orders for payment of the PPC for time and expenses spent in responding to any grievance, removal proceeding, or other claim or challenge arising from this order, including attorneys' fees and costs incurred, if any.
>
> 88. The PPC may withdraw from service at any time, upon 10 days written notice to the parents and the Court.

Managing custody litigant complaints and grievances against child custody evaluators (another quasi-judicial family law dispute resolution professional role) has led to practices and proposals in some jurisdictions consolidating supervision and discipline in the appointing court rather than the

evaluator's licensing board. Some have proposed a similar approach for supervision and discipline of parenting coordinators,

> In 2001, Kirkland and Kirkland determined that many state licensure boards were experiencing a burdensome and exorbitant increase in the number of board complaints against practitioners conducting CCEs. As a result, some boards responded with statutory and regulatory or administrative rule changes in order to quash and control the flow of complaints. This national survey found that complaints were rampant, but findings of fault against practitioners were very rare (about a 1% occurrence rate of findings of formal fault). While even frivolous board complaints are not for the faint of heart, the data from this study clearly reveal that if one practices in this area, the CCE practitioner is very likely to encounter a board complaint, but the board complaint is very likely to be dismissed with a finding of 'no probable cause' (Kirkland & Kirkland, 2001). We fully expect to see similar trends in the postdivorce world of PC. One developing trend has been to require participants with perceived grievances to take the issue up with the original court of jurisdiction rather than filing civil lawsuits or licensure board complaints, many of which turn out to be manipulative or vengeful in nature (Kirkland, Kirkland, King, & Renfro, 2006; Kirkland & Kirkland, 2006).
>
> Kirkland and Sullivan (2008) P*arenting* C*oordination* (PC) P*ractice ... supra* at p. 628

Kirkland and Sullivan's 2008 survey found that most of the jurisdictions surveyed adopted procedures confining supervision and discipline of parenting coordinators within the appointing court. They note that the question of whether licensing boards in these jurisdictions will assume concurrent jurisdiction remains uncertain,

> The process of grievance across jurisdictions universally ties the PC process and any related problems to the appointing court as the basis for PC authority and the authority to which the PC (and the parties) must ultimately answer. In most PC agreements and appointing court orders, the parties are specifically directed to take their complaint in writing first to the PC and then to the court. One PC has tried in vain to get a response from his professional licensure board about this matter, but the board has chosen not to respond. The most common grievance process outlined involved the following series of steps: the complaint is initially directed to PC, first infor-

mally, then in writing, and finally in a hearing with the appointing judge for final resolution.

I*d* at pp. 631-632

The survey also looked at the experiences of those few parenting coordinators who had faced licensing complaints,

> There were 54 survey responses. Only 6 practitioners (11%) had encountered formal complaints, all mental health practitioners and no attorneys. Only 1 (2%) of 54 practitioners had encountered a civil lawsuit as a PC. This lawsuit, summarized in Kirkland et al. (2006), was dismissed by summary judgment (Steinburg v. Kirkland, 2004). Of the six FMHPs with board complaints, three were psychologists and three were LPCs. All board complaints were dismissed with findings of no probable cause. These risk management numbers compare similarly to the numbers encountered in the CCE field (Kirkland & Kirkland, 2001; Bow & Quinnell, 2001). In the high-risk CCE world, Bow and Quinnell found that 1 in 10 CCE practitioners had encountered a civil lawsuit, while 35% had encountered at least one licensure board complaint. The Kirkland and Kirkland (2001) data revealed that, while CCE complaint levels are high, the actual findings of fault by licensure boards are very few and far between (1%). While the current numbers are relatively low compared to the CCE data, the PC field is relatively young and the same basic population that has resulted in massive increases in numbers of board complaints about predivorce CCE practice is bound to spill over into the PC arena. As indicated above, Kirkland and Kirkland (2006) speculated that the risk for complaints may actually be higher for PC than CCE due to the protracted nature of the PC relationship.
>
> One mitigating factor may be the fact that most PCs are apparently using PC agreements that direct parties with grievances to deal with the PC or the appointing court first, rather than going to the state licensure board or commence a civil action against the PC. The other possibility is that the PC movement may have benefited from some of the reforms that have been made by courts and licensure boards in response to dealing with the inundation of often groundless complaints generated by embittered CCE participants. It is also possible that there are relatively fewer complaints against PCs as compared to CCE's because many current PCs are wise, experienced CCE's who have learned to use airtight PC agreements and court-ordered case involvement as a means of protecting themselves against frivolous and vindictive board complaints and lawsuits.
>
> I*d*. at pp. 632-633

The appointing court is best positioned to assess the facts and best able to make orders that give a complaining party relief when warranted. Disciplinary agencies should rely on family court fact-finding when taking action to protect the public. Centering grievance procedures in the appointing court, and requiring that licensing agencies defer to the appointing court's findings avoids multiple proceedings and prevents inconsistent rulings. If licensing agencies have no jurisdiction, society has no way to protect the public from professionals who engage in grave misconduct. If licensing boards have unfettered discretion, court-appointed neutrals face uncertain and inconsistent standards, costly multiple proceedings and conflicting dispositions.

Prevention is the best remedy. If California is to make good use of the parenting coordination service model, it must enact enabling legislation, adopt rules of court embodying standards of conduct, and structure appointments for success -- not for intrinsic conflicts of interest. California must provide rigorous training opportunities for parenting coordinators, and family courts must supervise their appointees.

Each possible remedy for professional misconduct complaints works to deter misconduct, but each also serves different purposes.

Most grievance procedures start with an informal meeting between the complaining party and the professional. Sometimes the complaint can be resolved with an explanation by the parenting coordinator about the reasons for his actions, or by the parenting coordinator concluding the complaint is valid and changing his approach. Informal grievance sessions focus on fixing the problem, not fixing blame or punishment.

Recusal motions and other motions directed to the appointing family court give the family an opportunity for different case outcomes and may remove the errant professional from the case. Courts may develop procedures to remove individuals from lists of eligible parenting coordinators. The appointing court has a duty to set a reasonable fee for its appointees. While that

duty arises from Evid. Code §730 and Cal. Rules of Court, rule 5.220 in the case of evaluators (I*n re the Marriage of Laurenti* (2007) 154 Cal.App.4th 395, 402-404), clearly a court appointee cannot have unfettered power to set his or her own fees, and the appointing court must have inherent authority to set fees and resolve fee complaints.

Civil damage actions are the only avenue of that offers the prospect of compensation for a person able to establish that he or she was harmed by professional misconduct. But the litigation privilege (Civil Code §47) shields quasi-judicial dispute resolution professionals like parenting coordinators from civil damage actions. (H*oward v. Drapkin* (*supra*) The privilege also shields collateral witnesses. (J*acob* B. *v. County of Shasta* (2007) 40 Cal.4th 948)

Court-appointees are subject to supervision and direction by the appointing court. An appointing court can remove an appointee, give no weight to the appointee's findings and decisions, and determine the amount of the appointee's compensation. An appointing court can find an appointee in contempt of a court order. Some courts maintain lists of persons eligible for court appointments. Complaints of parties in a particular case or multiple cases may lead to protection of other litigants through exclusion of an individual from the list of potential appointees.

The purpose of licensing is protecting the public. Licensing complaints place the parenting coordinator's license and livelihood at risk. Licensing agency discipline proceedings are costly and stressful for the licensee. Concentrating fact-finding and supervision in the appointing court will serve a gatekeeping function reducing frivolous complaints to licensing agencies. Without such gatekeeping, few professionals will accept family court appointments.

The family court is in the best position to assess the facts and the conduct of the parenting coordinator in the context of the case's history and the historical conduct of the parties.

If parenting coordinators are exposed to multiple disciplinary proceedings in different forums based upon unclear and inconsistent standards of conduct, the work will not attract the best professionals. On the other hand, without accountability and consequences, the parties and children may be the subjects of abuses of the parenting coordinator's role, and the public may not be protected from incompetent or unethical practices.

WORD COUNT

I certify that the text of this brief including footnotes and headings, and excluding title page, tables, appendix and word count, contains 13,890 words as calculated by Microsoft Word™.

I declare under penalty of perjury that this declaration is true and correct and that it was executed on January 27, 2011 at Los Angeles, California.

_____

Leslie Ellen Shear, CFLS

Appendix: Parenting Coordination Laws in Other Jurisdictions

Arizona Parenting Coordinator Arizona Rules of Family Law Procedure Rule 74

No stipulation needed. Court may delegate decisionmaking authority. Qualifications: Attorney; psychiatrist (medical or osteopathy degree); psychologist; state licensed, social worker, professional counselor, marriage and family therapist, or substance abuse counselor; any other Arizona licensed or certified professional with education, experience, and special expertise regarding the particular issues referred; or professional staff of conciliation services.

Colorado Parenting Coordinator Colorado Revised Statutes 14-10-128.1

No stipulation needed. No delegation of decisionmaking authority. I*n re* D*auwe* (Colo. App. 2006)148 P.3d 282

Qualifications: "The parenting coordinator shall be an individual with appropriate training and qualifications and a perspective acceptable to the court."

Florida Parenting Coordinator Title 6 Civil Practice and Procedure, Chapter 61 Dissolution of Marriage; Support; Time-Sharing 61.125

No stipulation required. The scope of authority is dictated by the court's order in each case. The PC makes recommendations to the court unless there is a time sensitive issue in which case the pc can make temporary binding decisions.

Qualifications:

(a) To be qualified, a parenting coordinator must:

1. Meet one of the following professional requirements: a. Be licensed as a mental health professional under chapter 490 or chapter 491. b. Be licensed as a physician under chapter 458, with certification by the American Board of Psychiatry and Neurology. c. Be certified by

the Florida Supreme Court as a family law mediator, with at least a master's degree in a mental health field. d. Be a member in good standing of The Florida Bar.

2. Complete all of the following: a. Three years of postlicensure or postcertification practice. b. A family mediation training program certified by the Florida Supreme Court. c. A minimum of 24 hours of parenting coordination training in parenting coordination concepts and ethics, family systems theory and application, family dynamics in separation and divorce, child and adolescent development, the parenting coordination process, parenting coordination techniques, and Florida family law and procedure, and a minimum of 4 hours of training in domestic violence and child abuse which is related to parenting coordination.

(b) The court may require additional qualifications to address issues specific to the parties.

(c) A qualified parenting coordinator must be in good standing, or in clear and active status, with his or her respective licensing authority, certification board, or both, as applicable.

Idaho Parenting Coordinator Title 32 Domestic Relations, Chapter 7 Divorce Actions; 32-717D. Idaho Code and IRCP Rule 16(l)

No stipulation required for appointment. Decisionmaking powers only if expressly delegated.

Qualifications: (*Stipulation required for appointment of unlicensed individual.*)

(A) (1) To be appointed as a Parenting Coordinator in the absence of a stipulation of the parties a person must be on the list of mediators compiled by the Supreme Court pursuant to Rule 16(j)(6)(B)(ii). Parenting Coordinators must have participated in at least twenty (20) hours of training in domestic violence and lethality assessment as set out in (A)(2) below within two years of the initial application. They must also

have a basic familiarity with child development as it pertains to issues of bonding, attachment, and loss in early life and future child development. Each parenting coordinator must, at his or her own expense, submit to a criminal history check as provided for in Rule 47, I.C.A.R. (2) The twenty (20) hours of training required shall be in one or more of the following areas: (a) domestic violence; (b) violence in families; (c) child abuse; (d) anger management; (e) prediction or evaluation of future dangerousness; or (f) psychiatric causes of violence; and shall be acquired by completing a program approved or sponsored by one of the following associations: (a) Idaho Psychiatric Association; (b) Idaho Psychologists Association; (c) Idaho Nursing Association; (d) Idaho Association of Social Workers; (e) Idaho Counselors Association; (f) Council on Domestic Violence and Victim Assistance; (g) Idaho State Bar; (h) Idaho Supreme Court; (i) an accredited college or university; or (j) any state or national equivalent of any of these organizations. Any program that does not meet the criteria set out in this subsection may be submitted for approval either prior to or after completion.

Kansas Case Management K.S.A. Chapter 23 Article 10 Case Management

No stipulation required. Recommendations only.

Qualifications:

To qualify as an appointed case manager, an individual shall: (1) Be qualified to conduct mediation; (2) have experience as a mediator; (3) attend a workshop, approved by the district court in which the case is filed, on case management; and (4) participate in continuing education regarding management issues.

Louisiana Parenting Coordinator Louisiana Revised Statutes 9:358. 1-358.9

No stipulation required. Recommendations only.

Qualifications:

A. A person appointed as a parenting coordinator shall meet all of the following qualifications: (1) Possess a master's, Ph.D., or equivalent degree, in a mental health field, such as psychiatry, psychology, social work, marriage and family counseling, or professional counseling, hold a Louisiana license in the mental health profession, and have no less than three years of related professional post-degree experience. (2) Be qualified as a mediator under R.S. 9:334. (3) Complete a minimum of forty hours of specialized training on parent coordination. A maximum of fourteen hours of family mediation training may be used towards the total forty hours.

Maine Parenting Coordination and Assistance Maine Revised Statutes Tit. 19-A, Section 1659

No stipulation required. Recommendations binding unless party seeks court review and court reverses.

Qualifications:

Parenting coordinator" means a neutral 3rd party appointed by the court to oversee and resolve disputes that arise between parents in interpreting and implementing the parenting plan set forth in the court's order and who:

(1) On July 1, 2009 is listed in the roster of guardians ad litem maintained by the Chief Judge of the District Court pursuant to rules adopted by the Supreme Judicial Court, or who holds one or more of the licenses listed in the rules and is listed on the roster after July 1, 2009 after completing the other requirements set forth in the rules; and

(2) Meets any other qualifications and requirements established by the Supreme Judicial Court. [2009, c. 345, §2 (NEW).]

[Guardian ad litem requirements: C. Criteria for Initial Listing on the Roster. i. Credentials. 1. A current valid license to practice law in the

state of Maine. 2. A current valid license to practice as an LSW, an LCSW, LPC LCPC, LMSW, LMFT, LPC, psychologist or psychiatrist in the state of Maine. 3. A Certification of Qualification by the Director of the CASA program, or 4. Waiver of the licensure or qualification requirement by the Chief Judge pursuant to paragraph II(3). ii. Core Training. Attendance at a Guardian training with a curriculum of at least 16 hours that has been approved by the Chief Judge satisfies this requirement. The curriculum must include specified learning outcomes and activities designed to meet these outcomes, and must cover Titles 19-A and 22, dynamics of domestic abuse and its effect on children, dynamics of divorce and its effect on children, child development, the effects of abuse, neglect and trauma on children, substance abuse, legal issues and processes, the duties and obligations of the Guardian as an agent of the court and interviewing techniques.

For a Guardian acting under the auspices of the CASA program, successful completion of CASA training satisfies this requirement. CASA Guardians who accept appointment in non-CASA cases must complete the core training requirements.]

Minnesota Parenting Time Dispute Resolution/Parenting Time Expeditor Minnesota Statutes 518.1751

No stipulation required.

Decisions binding unless modified or vacated by the court.

Qualifications:

To qualify for listing on a court administrator's roster of parenting time expeditors, an individual shall complete a minimum of 40 hours of family mediation training that has been certified by the Minnesota supreme court, which must include certified training in domestic abuse issues as required under Rule 114 of the Minnesota General Rules of Practice for the District Courts. To maintain one's listing on a court

administrator's roster of parenting time expeditors, an individual shall annually attend three hours of continuing education about alternative dispute resolution subjects.

North Carolina Parenting Coordinator North Carolina General Statutes Section 1. Chapter 50 Article 5 {HB 1221}

No stipulation required.

Decisionmaking authority delegated by court on case-by-case basis.

Qualifications:

(a) To be eligible to be included on the district court's list of parenting coordinators, a person must meet all of the following requirements: (1) Hold a masters or doctorate degree in psychology, law, social work, counseling, medicine, or a related subject area. (2) Have at least five years of related professional post degree experience. (3) Hold a current license in the parenting coordinator's area of practice, if applicable. (4) Participate in 24 hours of training in topics related to the developmental stages of children, the dynamics of high conflict families, the stages and effects of divorce, problem solving techniques, mediation, and legal issues.

(b) In order to remain eligible as a parenting coordinator, the person must also attend parenting coordinator seminars that provide continuing education, group discussion, and peer review and support. (2005 228, s. 1.)

North Dakota Parenting Coordinator North Dakota Century Code §14-09.2-01 and N.D. Ct. Rules Rule 8.11

No stipulation required.

Decisionmaking power.

Qualifications:

(b) Qualifications. To qualify as a parenting coordinator and be listed on the roster under N.D.C.C. §14-09.2-03, a person shall provide the State Court Administrator with written credentials. A parenting coordinator:
(1) Shall have either an Associate Degree in an academic field related to child care, child development, or children's services with two years of experience in family and children services; or a Bachelor's Degree;
(2) Shall have completed at least 12 hours of specialized parenting coordinator training which includes developmental stages of children, the dynamics of high conflict, the stages and effects of divorce, problem-solving techniques, and the dynamics of domestic violence, its impact on children and lethality assessment;
(3) Shall have completed a minimum 40 hours of domestic relations mediation training;
(4) Shall have no criminal conviction for, or substantiated instance of child abuse or neglect, and shall not be or have been restrained by a domestic violence protection order or disorderly conduct restraining order entered after notice and hearing; and
(5) Shall complete at least 18 hours of parenting coordinator related training every three years after receiving the initial hours of specialized training. Parenting Investigators otherwise qualified and trained under this rule, may use either parenting investigator continuing education or parenting coordinator continuing education to meet this requirement.

Oklahoma Parenting Coordinator 43 O.S. 120.1 et seq.

No stipulation required.

Scope of authority delegated on case by case basis.

Qualifications:

Each judicial district shall adopt local rules governing the qualifications of a parenting coordinator; provided, however, the qualifications

adopted shall not exceed the qualifications established in subsection B of this section.

B. To be qualified as a parenting coordinator, a person shall: 1. Have a master's degree in a mental health or behavioral health field, shall have training and experience in family mediation and shall be a certified mediator under the laws of this state; or 2. Be a licensed mental health professional or licensed attorney practicing in an area related to families.

C. Parenting coordinators who are not licensed attorneys shall not be considered as engaging in the unauthorized practice of law while performing actions within the scope of his or her duties as a parenting coordinator.

Oregon Parenting Coordinators O.R.S. 107.425(3)

No stipulation required.

Scope of decisionmaking authority determined by appointing court on case by case basis.

Qualifications determined by presiding judge of each judicial district – must consider "any guidelines recommended by the statewide family law advisory committee."

South Dakota Parenting Coordinators S.D. Codified Laws 25-4-63

No stipulation required.

The Supreme Court may promulgate rules pursuant to §16-3-1 to prescribe the authority, duties, appointment, and compensation of parenting coordinators. Could not locate rules.

Texas Parenting Coordinator and Parenting Facilitator PAST: Texas Family Code 153.601-611 Revised 2007 by HB 555 {TFC 153. 601-611, 153.007, 153.133}CURRENT: House Bill 1012 {TFC 153.601, 153-605, 153-6051, 153.606, 153.6061, 153-607, 153-6071, 153.6081, 153.6082, 153-6083, 153-6091, 153.610

No stipulation required. The PC's duties are defined by the court on a case-by-case basis. The statute mentions they may have the duty of "settling disputes regarding parenting issues and reaching a proposed joint resolution or statement of intent regarding those disputes", but it is unclear as to whether that permits them to make decisions. The PF has the same scope of duties as the PC, except that in addition the PF can also monitor compliance with court orders.

Qualifications:

Sec. 153.610. QUALIFICATIONS OF PARENTING COORDINATOR.

(a) The court shall determine the required qualifications of a parenting coordinator, provided that a parenting coordinator must have experience working in a field relating to families, have practical experience with high-conflict cases or litigation between parents, and:

(1) hold at least: (A) a bachelor's degree in counseling, education, family studies, psychology, or social work; or (B) a graduate degree in a mental health profession, with an emphasis in family and children's issues; or

(2) be licensed in good standing as an attorney in this state.

(b) In addition to the qualifications prescribed by Subsection (a), a parenting coordinator must complete at least: (1) eight hours of family violence dynamics training provided by a family violence service provider; (2) 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court; and (3) 24 classroom hours of training in the fields of family dynamics, child development, family law and the law governing parenting coordination, and parenting coordination styles and procedures.

(c) In appropriate circumstances, a court may, with the agreement of the parties, appoint a person as parenting coordinator who does not satisfy the requirements of Subsection (a) or Subsection (b)(2) or (3) if the court

finds that the person has sufficient legal or other professional training or experience in dispute resolution processes to serve in that capacity. (d) The actions of a parenting coordinator who is not an attorney do not constitute the practice of law.

Utah Parent Coordinator Code of Judicial Administration Rule 4-509

No stipulation required. Consults with parents and recommends to parents.

Qualifications:

To be eligible to serve as a parent coordinator, the person must have the following minimum qualifications: (4)(A) Social workers who have completed graduate level coursework in child development and hold the designation of Licensed Clinical Social Worker in this state. (4)(B) Doctoral level psychologists who have completed graduate level coursework in child development and are licensed as a psychologist in this state. (4)(C) Physicians who have completed graduate level coursework in child development, are board certified in psychiatry, and are licensed as a physician in this state. (4)(D) Marriage and family therapists who have completed graduate level coursework in child development and hold the designation of Licensed Marriage and Family Therapist in this state. (4)(E) A court-appointed parent coordinator must have: (4)(E)(i) at least 3 years of post-licensure clinical practice substantially focused on child/marital/family therapy; and (4)(E)(ii) a working familiarity with child custody/parent-time law and the ethical issues involved in custody matters.

Vermont Parent Coordinator Vermont Court Rules: Rule 4(s)

No stipulation. Recommendations only.

Supreme Court to determine qualifications.

PROOF OF SERVICE (Court of Appeal)

[X] **Mail** [ ] **Personal Service**

FOR COURT USE ONLY

Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form.

Case Name: Randy Rand, Ed.D. v. Board of Psychology

Court of Appeal Case Number: C064475

Superior Court Case Number: 34-3009-80000359

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**

2. My [ ] residence [X] business address is *(specify):* 16133 Ventura Blvd Fl 7
Encino CA 91436-2403

3. I mailed or personally delivered a copy of the following document as indicated below *(fill in the name of the document you mailed or delivered and complete either a or b):*

a. [X] **Mail.** I mailed a copy of the document identified above as follows:

(1) I enclosed a copy of the document identified above in an envelope or envelopes **and**

(a) [ ] **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.

(b) [X] **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

(2) Date mailed: 1-27-11

(3) The envelope was or envelopes were addressed as follows:

(a) Person served: David D. Carico — Attorney for Plaintiff and Appellant
(i) Name: Law Offices of David Carico
(ii) Address: 100 Montgomery Street, Suite 1600
San Francisco, CA 94104-4345

(b) Person served: Kamala D. Harris, Attorney General — Attorneys for Defendant and Respondent
(i) Name: Kerry Weisel, Deputy Attorney General
(ii) Address: Office of the State Attorney General
455 Golden Gate Avenue Suite 11000
San Francisco, CA 94102-7004

(c) Person served: Clerk of the Court — Trial Court
(i) Name: Sacramento County Superior Court
(ii) Address: 720 Ninth Street
Sacramento, CA 95814-1302

[ ] Additional persons served are listed on the attached page *(write "APP-009, Item 3a" at the top of the page)*.

(4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from *(city and state):* Los Angeles, California

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Judicial Council of California
APP-009 [New January 1, 2009]

CASE NAME: Randy Rand, Ed.D. v. Board of Psychology	CASE NUMBER: C064475

3. b. ☐ **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:
- (a) Name:
- (b) Address where delivered:
- (c) Date delivered:
- (d) Time delivered:

(2) Person served:
- (a) Name:
- (b) Address where delivered:
- (c) Date delivered:
- (d) Time delivered:

(3) Person served:
- (a) Name:
- (b) Address where delivered:
- (c) Date delivered:
- (d) Time delivered:

☐ Names and addresses of additional persons served and delivery dates and times are listed on the attached page *(write "APP-009, Item 3b" at the top of the page)*.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 1-27-11

G.H. Magruder
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

▶
(SIGNATURE OF PERSON COMPLETING THIS FORM)