

Family Law

Parenting Coordinators: Where Do They Figure in The Future of Family Law?

By Kathleen Pasquarello Stockton

Parenting Coordinators are being utilized more frequently both by the family part bench and bar as the need for alternatives in addressing and resolving custody- and parenting time-related disputes continues to grow. As any practicing family law attorney or family part judge knows all too well, disagreements between litigants continue beyond the final custody and parenting time determination. It is virtually impossible for a court order or divorce decree to provide for a resolution for every circumstance or dispute that may occur in the future. Even the most comprehensive custody and parenting time orders or judgments leave room for continuing conflict and discord. In addition, and perhaps most obviously, issues which litigants face in custody matters change as children enter different stages in life, where a child's needs and desires change dramatically. The appointment of a Parenting Coordinator can provide an opportunity for litigants to receive input and suggestions from a trained, experienced individual, who would presumably be available to help with last-minute changes or minor issues which

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arise. While the concept of a Parenting Coordinator is encouraging, it is important for family law attorneys to be very careful in understanding exactly what role a Parenting Coordinator should have in their case and in the actual drafting of an order of appointment.

In 2007, our New Jersey Supreme Court approved the details of a Parenting Coordinator Pilot Program to occur in four vicinages, specifically Bergen, Middlesex, Morris/Sussex, and Union. In the Program Guidelines, a Parenting Coordinator was defined as

a qualified neutral person appointed by the court, or agreed to by the parties, to facilitate the resolution of day to day parenting issues that frequently arise within the context of family life when parents are separated. Although a Parenting Coordinator's goal is similar to that of a mediator as it pertains to "aiding" and "facilitating" parties in reaching a resolution on parenting-type issues, one primary difference is that mediation is always considered confidential and communications which occur in mediation may not be submitted to the court. With the appointment of

a Parenting Coordinator, there is an understanding, and should routinely be included in the order of appointment, that there is no confidentiality and any and all communications can be admitted into evidence under the Rules of Evidence and Rules of Court. Generally, the Parenting Coordinator should be authorized to have communication with the parties' counsel.

The operative words in the more expansive version of the above definition of a Parenting Coordinator are "aid," "facilitate" and "empower," referring to the coordinator's objectives and goals as it relates to the parties. Nowhere in this definition does it state that the Parenting Coordinator is an individual who has final decision-making authority on any issue. Nor does the definition specifically provide that a Parenting Coordinator should have the ability to make recommendations on any issue. In fact, the guidelines specifically state that a Parenting Coordinator's recommendations shall only be implemented by agreement of the parties. It is important, therefore, to review what the guidelines provide as it pertains to the actual "authority" of a Parenting Coordinator.

First, the guidelines require that the order of appointment specify those matters that the Parenting Coordinator is authorized to address. The guidelines authorize the Parenting Coordinator to make recommendations such as:

- Time, place and manner of pick-up and drop-off of children;
- Child care arrangements;
- Minor alterations in parenting schedule with respect to week-night, weekend or holiday parenting time that do not substantially alter the court-approved parenting plan;
- First and last dates for summer vacation;
- Schedule and conditions of telephone communication with the children;
- Selection and scheduling of activities;
- Any other issues submitted for immediate determination by agreement of the parties;
- Referrals to other professionals to improve family functioning.

Second, as stated in the guidelines, the

Parenting Coordinator should “facilitate the resolution of day to day parenting issues that frequently arise within the context of family life when parents are separated.” In the absence of a Parent Coordinator, issues such as those referenced above are frequently brought to the attention of a litigant’s attorney, who then has to contact the other party’s attorney. This not only causes the parties to incur legal fees, but also delays the ultimate resolution of those issues. Further, the fact that the primary focus of the Parenting Coordinator is on the “best interests of the children,” it makes sense for minor issues to be presented through the use of a Parenting Coordinator.

I am troubled, however, by the potential for a Parenting Coordinator to be permitted to override a primary custodial parent’s decision-making abilities with respect to not only major decisions, but with day-to-day decisions. It is established law in New Jersey that, when parties share joint legal custody, the roles that both parents play in their children’s lives differ depending on their custodial functions. *Pascal v. Pascal*, 140 N.J. 583, 600 (1995). In *Pascal*, the Supreme Court adopted the terms “primary caretaker” and “secondary caretaker” in place of “custodial parent” and “non-custodial parent” respectively due to its determination that those terms failed to describe custodial functions accurately. The Supreme Court went on to acknowledge, “[a]lthough both roles create responsibility over children of divorce, the primary caretaker has the greater physical and emotional role.” In *Pascal*, the Supreme Court agreed with the Appellate Division in the holding in *Brzozowski v. Brzozowski*, 265 N.J. Super. 141, 147, 625 A.2d 597 (Ch. Div.1993), adopting the following reasoning:

It is fully consistent with the reasonable expectations of the parties, that that parent given the responsibility for the day-to-day

rearing of the children should be able to discharge that responsibility (subject, as always, to notification to, and dialogue with, the joint custodial parent). The contrary holding will produce applications, emergent and otherwise, to the court whenever the parties cannot reach agreement.

As a family law practitioner and a strong supporter of alternative dispute resolution, I am enthusiastic about the option of having a “Parenting Coordinator” appointed to help litigants (especially those in high-conflict cases) with minor matters that arise after the overall custody and parenting time issues are settled. Parenting Coordinators, however, should not override a primary custodial parent’s ability to make final decisions for children. We must, therefore, remain mindful of the primary custodial parent’s rights and responsibilities. Similarly, Parenting Coordinators should not be used by a litigant to try and change the custodial and parenting time arrangement already in place. It is the court’s responsibility to ensure that a prior order is not modified without a showing of a substantial change in circumstances and that the Rules of Evidence and Rules of Court are followed when considering recommendations made by Parenting Coordinators.

Parenting Coordinators can be described as a cross between mediators and custody evaluators, and should be utilized by family part judges and attorneys in cases which could benefit from such an appointment. Any process which promotes communication and reduces conflict between litigants is valuable. The process must not, however, violate a party’s substantive or procedural rights. Carefully defining a Parenting Coordinator’s role and authority in the order of appointment is, therefore, critical to ensure the proper implementation of a Parenting Coordinator. ■