

NEW JERSEY STATE BAR ASSOCIATION

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March 30, 2023

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments
Hughes Justice Complex, P.O. Box 037
Trenton, NJ 08625-0037

Re: Comments on Rules Reports

Dear Judge Grant:

Thank you for the opportunity to review and provide feedback on the 2023 Rules Reports. I am pleased to submit recommendations and comments from the New Jersey State Bar Association (NJSBA) in connection with the following reports:

- Criminal Practice Committee
- Committee on Diversity, Inclusion and Community Engagement, and
- Family Practice Committee.

The NJSBA does not have any comments to share on the reports from the Complementary Dispute Resolution, Evidence Rules and Municipal Court Practice Committees.

The NJSBA applauds the efforts of the Court's committees in researching, discussing and debating potential rule amendments in an effort to improve the administration of justice in our court system. The NJSBA recognizes the importance of ensuring our rules are clear, establish procedures that are fair to all parties, and, most importantly, advance the interests of and access to justice.

Report of the Criminal Practice Committee

The NJSBA generally supports the recommendations in the Report.

Report of the Committee on Diversity, Inclusion and Community Engagement (DICE)

The NJSBA generally supports the recommendations in the Report and offers the following more specific comments:

RECOMMENDATION 2023:01 The NJSBA strongly supports the formation of a working group to address the effect and relevance of true poverty calculations to the courts. We believe that using a true poverty level instead of the federal poverty level when evaluating the ability of individuals to pay a variety of fees and fines will greatly benefit litigants in need in a wide range of matters, including child support calculations, applications for court-appointed counsel, wage and asset garnishments, monetary sanctions, restitution hearings, fee waivers and document and transcript requests. Because definitions of poverty may have changed in the post-pandemic world, the NJSBA suggests that the working group begin discussions with determining what poverty looks like now and how it can be addressed in the day-to-day work of the courts. To facilitate those discussions, we suggest the group include practitioners who work with populations of people who are impoverished, such as the Public Defender's Office or Legal Services of New Jersey.

The NJSBA also commends the Committee for recommending changes in language, such as the recommended shift from using the word "indigent" to focusing on ability to pay and urges the Court to implement the recommended language changes across all of its reach.

RECOMMENDATION 2023:02, 03 and 04: The NJSBA supports the Judiciary's efforts and the Committee's recommendations to identify those court proceedings where participation can be effectively accomplished remotely. We support the Committee's recommendations to focus efforts on bridging the technology gap that exists for certain participants in court proceedings. The NJSBA agrees that technology kiosks have been helpful to address some technology issues, but suggests additional consideration be given to partnering with public libraries and other local and state organizations to further assist court participants in remote participation. While kiosks offer access to technology, they still require participants to travel to the courthouse to use them. Having more local options may allow for greater access.

The NJSBA also supports expanded remote viewing access to court proceedings and suggests that the Judiciary explore further upgrades in its technology to ensure it can accommodate everyone wishing to utilize the remote viewing option, so that access is not hindered by technology limits.

RECOMMENDATION 2023:06: The NJSBA strongly supports this recommendation, consistent with its past support of classifying name change court filings as non-public records under Rule 1:38. Without confidential hearings, the confidentiality protections for name change applicants are incomplete. By designating name change hearings closed and confidential, the Judiciary will be closing an important gap in the current procedures and furthering the goals of addressing the previously raised and documented safety and privacy concerns of people who are transgender, gender non-conforming and non-binary.

The NJSBA also supports the recommended efforts to remove deadnames from name change captions. For many people who are transgender and non-binary, hearing their deadname can be uncomfortable or even constitute a form of trauma. Including a deadname in a caption is especially troubling because the caption is referred to frequently in communications regarding a case, both in writing and in court proceedings.

Finally, the NJSBA supports the development of sample colloquies for name change hearings for minors. In name change hearings, courts sometimes engage in colloquy that is irrelevant to the applicable legal standards which can result in the application of a heightened standard. Further, because of the personal nature of the gender affirmation process, extraneous colloquy may be invasive or distressing for applicants.

RECOMMENDATION 2023:07, 08 and 09: The NJSBA supports the recommended efforts to increase the number of law clerks who are diverse. A clerkship provides valuable training and experience for new attorneys, which they later bring into the sectors they serve as practicing attorneys, shaping and influencing our profession and communities throughout their careers. It is therefore critical that diverse and inclusive life experiences are represented among the law clerks serving in all courts.

The NJSBA supports the collection of additional demographic data to better understand the composition of the applicant pool and effectiveness of outreach and recruitment efforts. We note, however, that the proposed data collection is focused on race/ethnicity and gender. We recommend this be expanded to include additional groups and characteristics that are critical to ensuring that law students and law clerks, overall are reflective of the diversity and inclusion of the bar, such as gender identity, sexual orientation, and differing ability.

The law clerk alumni network and career services recommendations would be a very helpful resource for law students and clerks. The NJSBA suggests that further consideration be given to challenges faced by first-generation law students in becoming aware of and accessing clerkship opportunities.

The NJSBA offers these additional recommendations for the Judiciary's consideration:

- Continue/expand outreach to affinity bars to increase the diversity of the law clerk applicant pool.
- Expand beyond the state's three law schools to other law schools in the region when recruiting law clerks.
- Consider having a Court representative specifically tasked with recruiting law clerks from diverse backgrounds and advocating the benefits of clerkships.
- Collect and analyze data to evaluate why a larger percentage of law students from diverse background are not becoming law clerks. Examine whether, for example, diverse candidates are applying but not being hired, or whether there are too few diverse candidates applying (and if so, why).
- Implement a timeline for law clerk diversity initiatives.
- Recognize the connection between a Judiciary that is diverse and a diverse population of law clerks and redouble efforts to ensure a diverse and inclusive Judiciary.

Family Practice Committee

The NJSBA generally supports the recommendations of the Family Practice Committee and offers the following more specific comments on certain proposals:

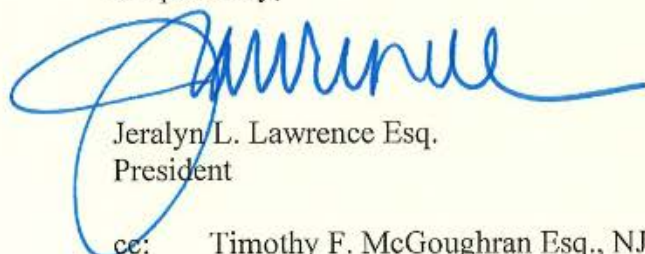
Rule 5:10-17: The NJSBA supports the amendment to R. 5:10-17 that clarifies that no background checks of any kind, nor the provision of social security numbers are required when processing a co-parent adoption. This is an important clarification, as this issue has been encountered by qualifying litigants across the state when entering judgments of adoption.

Proposed New Rule 5:8D: The NJSBA is appreciative of the Committee's consideration of the NJSBA's proposed rule addressing parenting coordinators. We continue to believe a regulated and uniform parenting coordination process will be beneficial to the court, matrimonial litigants, parenting coordinators, and attorneys, and will help avoid unnecessary litigation. We further believe that it is important to clearly define who may serve as a parenting coordinator and the scope and limits of their authority. We suggest a few clarifications to the proposal, however, that we believe will strengthen the Rule, ensure the administrative directive will be easily located, and help the sample order to provide uniformity in the parenting coordination process. Our proposed changes, along an explanation for each, are contained in the attached, red-lined version of the proposal.

Again, the New Jersey State Bar Association thanks the Supreme Court for publishing these reports and allowing the bar to submit comments and recommendations. We commend the extensive volunteer efforts that contribute to the work of the various committees and hope that our comments represent a meaningful contribution to their debate.

Our leaders also look forward to addressing the Court at the public hearing. The opportunity to participate in all aspects of the rule-making process, which has a significant impact on the practice of law in New Jersey, is appreciated. If you have any questions regarding these recommendations, please do not hesitate to contact me.

Respectfully,



Jeralyn L. Lawrence Esq.
President

cc: Timothy F. McGoughran Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director

**PROPOSED CLARIFICATIONS TO
SUPREME COURT FAMILY PRACTICE COMMITTEE'S
PARENTING COORDINATOR PROPOSAL
SUBMITTED BY THE NEW JERSEY STATE BAR ASSOCIATION
MARCH 30, 2023**

NOTE: Proposed clarifications appear in **bold**. Proposed additions are underlined, like this. Proposed deletions are struck through, like ~~this~~. An explanation of each clarification follows in a separate italicized paragraph.

Rule 5:8D. Appointment of Parenting Coordinators [new]

A Parenting Coordinator is a qualified, neutral, mental health or legal professional who is appointed by the court either upon consent of the parties, or by the court after a finding of good cause set forth in writing or on the record. The Parenting Coordinator's purpose is to assist parents who are unable to resolve disputes and effectuate resolution of issues that arise in the process of raising their children. The role of the Parenting Coordinator is to implement the parties' parenting plan by facilitating the resolution of day-to-day parenting issues in a timely manner when the parties cannot resolve issues on their own.

The Parenting Coordinator's goals are to: aid the parties in monitoring and effectuating the existing parenting plan; reduce misunderstandings and miscommunication between the parents; help reduce the amount of litigation filed with the Family Part; clarify priorities of the parents and their children; explore possibilities for compromise; and develop methods of communication that promote collaboration and cooperation in parenting. The Parenting Coordinator should, whenever practical, seek to facilitate decision-making between the parties or to make recommendations when the parties cannot agree. The Parenting Coordinator should provide guidance and direction to the parties with the primary focus on the child's best interests by reducing conflict and fostering sound decisions that will aid positive child development. The qualifications, duties, and form of order to 22 appoint a Parenting Coordinator shall be in accordance with guidelines established by the Administrative Director of the Courts, **which are set forth in Appendix [XX] to these Court Rules.**

EXPLANATION: Making the administrative directive and the sample form of order an appendix to the Court Rules is akin to what occurred when the Family Law Arbitration Court Rule was adopted. See R. 5:1-5. This ensures transparency and provides the highest level of assistance to those seeking to locate, review, and draft pleadings and/or correspondence that incorporates what is presently the administrative directive.

If there is a disinclination toward making the administrative directive and sample form of order into an Appendix to the Court Rules, we respectfully propose that an official comment below the proposed Court rule be added to indicate that the guidelines established by the Administrative Director of the Courts can be located at www.njcourts.gov (or the specific web location). The procedures included in the

guidelines, which are necessary to ensure Parenting Coordinators are properly appointed and their role is clear and understood, should be readily accessible to parties, judges, attorneys, and Parenting Coordinators.

Proposed Guidelines:

Appointment of Parenting Coordinators

(a) General. A Parenting Coordinator is a qualified, neutral, mental health or legal professional who is appointed by the court either upon consent of the parties, or by the court after a finding of good cause set forth in writing or on the record. The Parenting Coordinator's purpose is to assist parents who are unable to resolve disputes and effectuate resolution of issues that arise in the process of raising their children. The role of the Parenting Coordinator is to implement the parties' parenting plan by facilitating the resolution of day-to-day parenting issues in a timely manner when the parties cannot resolve issues on their own.

The Parenting Coordinator's goals are to: aid the parties in monitoring and effectuating the existing parenting plan; reduce misunderstandings and miscommunication between the parents; help reduce the amount of litigation filed with the Family Part; clarify priorities of the parents and child; explore possibilities for compromise; and develop methods of communication that promote collaboration and cooperation in parenting. The Parenting Coordinator should, whenever practical, seek to facilitate decision-making between the parties or to make recommendations when the parties cannot agree. The Parenting Coordinator should provide guidance and direction to the parties, with the primary focus on the child's best interests, by reducing conflict and fostering sound decisions that will aid positive child development.

(b) Parenting Coordination Guidelines.

(1) Appointment of the Parenting Coordinator. A Parenting Coordinator may be appointed at any time during a case involving minor children after a parenting plan (either temporary or as a final order) has been established and when the parties cannot resolve day-to-day parenting issues that frequently arise within the context of family life when parents are separated on their own ~~only after entry of a pendente lite order or a temporary or final custody order and parenting plan.~~ Parenting Coordinators do not serve as custody or parenting plan evaluators. In cases where a domestic violence restraining order has been issued pursuant to the Prevention of Domestic Violence Act (or equivalent law from another jurisdiction), the court may only appoint a Parenting Coordinator if the victims of domestic violence consent at the sole election of the victim. If a domestic violence restraining order issues after the Parenting Coordinator is appointed, victims may at their sole option, terminate the Parenting Coordination process, with the election to terminate or proceed with the process being set forth in writing by the victim within 10 days of the issuance of a final restraining order. ~~The victim has the sole option to terminate the Parenting Coordinator process.~~ Each party shall be permitted to briefly interview potential Parenting Coordinator candidates before the court makes the appointment.

EXPLANATION: The NJSBA believes the first two sentences of this section should be included in the Court Rule and not the Administrative Directive, as it should be clear to the Court and the litigants/counsel from a review of the Court Rule as to when and why a Parenting Coordinator may be appointed. Furthermore, we suggest clarifying the language in those sentences to reflect that a Parenting Coordinator should be appointed only when parenting issues arise. As currently worded, it gives the perception that the Parenting Coordinator could be appointed following any motion, including those that do not involve parenting issues or establish a parenting plan.

We believe the other suggested amendments to this paragraph clarify the manner in which Parenting Coordination appointments would be terminated in instances involving victims of domestic violence. A 10-day timeframe for termination of the Parenting Coordination process after the issuance of the Final Restraining Order will avoid a circumstance in which the parties continue with the Parenting Coordination process unnecessarily. Furthermore, as currently worded, only the victim of domestic violence could terminate the Parenting Coordination process, which can be read to imply that the other party does not have a right to terminate it. While we agree that the victim must have the right to unilaterally terminate the process, the other party should be able to terminate the process following the procedures set forth in paragraph 11 of the administrative directive.

(2) Authority of the Court. The appointment of a Parenting Coordinator shall not affect the court's jurisdiction in any aspect of the case, including custody, parenting time or support, and its management and control of the case.

(3) Authority of the Parenting Coordinator.

(A) The Order of Appointment shall:

(i) authorize the Parenting Coordinator to facilitate discussion between the parties;
and

(ii) authorize the Parenting Coordinator to make ~~non-binding~~ recommendations to the parties in the event the parties cannot reach an agreement. The Order of Appointment shall specify whether the Parenting Coordinator's recommendations shall be binding upon the parties unless a party objects and then files a motion or order to show cause within a specified time period, or whether the recommendation is non-binding pending judicial review and adoption. ; and

~~(iii) indicate the Parenting Coordinator's recommendations will be binding upon the parties unless a party objects and then files a timely motion or Order to Show Cause.~~

EXPLANATION: The NJSBA believes that this modification will address the contradictory language proposed in (ii) and (iii) above, and clarify the critical issue of whether a Parenting Coordinator's recommendations shall be binding or non-binding,

to be determined by the Court or the parties on a case-by-case basis and clearly specified in the Order of Appointment.

(B) The Parenting Coordinator shall not have authority to make recommendations regarding financial issues or modify legal and physical custody. The Parenting Coordinator may make recommendations to facilitate parenting time, including but not limited to the following:

- (i) Time, place, and manner of pick-up and drop-off of child,
- (ii) Childcare arrangements,
- (iii) Minor or temporary alterations in parenting schedules for weeknight, weekend, holidays, vacation, and special events that will not substantially alter the parenting plan,
- (iv) Dates for summer vacation,
- (v) **The non-custodial parent's** Schedule and conditions of phone or other contact (e.g., text and email) with the children while in the other parent's custody,

EXPLANATION: Eliminating the words "noncustodial parent's" from the present draft avoids any appearance that the section only applies to a single party, as opposed to both parties, and avoids any potential confusion as to how custody would be defined for this purpose.

- (vi) Selection and scheduling of activities and resolving conflicts between parties concerning the child's participation in recreation, enrichment, and extracurricular activities/programs ~~only after the parties have made the initial selections,~~

EXPLANATION: If there is a disagreement about a child participating in an extracurricular activity, the matter should be presented to the Parenting Coordinator prior to the enrollment or registration. If the matter is presented for resolution after the parties have made their initial selections, it is often too late for the Parenting Coordinator to provide assistance. Parenting coordination allows parties to indicate preferences, exchange proposals, and attempt to reach agreement before decisions are made. Moreover, the present language does not account for a situation in which the initial selections conflict.

- (vii) Referrals to other professionals to improve family functioning, including recommendations for custody or other focused evaluations,
- (viii) A child's travel and passport arrangements,
- (ix) Equipment and personal possessions of the child, including movement of these items between households for the child's use,

(x) Clarification of provisions in parenting plans to address inadvertent gaps that may lead to conflict between the parties including defining specific hours for pickup/drop-off and transportation during holidays,

(xi) Information exchanges including school, health, social activities, and communication about the child between the parties,

(xii) Consistency in child disciplinary matters,

(xiii) Non-permanent significant changes in a child's appearance including haircuts, hair color changes, dress code, manicures, and

(xiv) All other issues agreed upon by the parties and the Parenting Coordinator to help effectuate resolution of custody and parenting time issues.

(c) Qualifications of Parenting Coordinators.

(1) Professional Qualifications.

(A) ~~Retired Superior Court Judges and~~ Attorneys. ~~Retired Superior Court Judges and~~ Attorneys must possess the following qualifications to serve as a Parenting Coordinator:

(i) Be admitted to practice law in the State of New Jersey for at least seven years,

(ii) Be an attorney in good standing with an active license to practice law in the State of New Jersey, and

(iii) Have a practice that is substantially devoted to matrimonial law, including extensive practical professional experience with high conflict family cases.

EXPLANATION: As a retired Superior Court judge is not permitted to serve as a guardian ad litem, the NJSBA respectfully submits that a retired Superior Court judge would similarly be precluded from serving as a Parenting Coordinator. Appearances of impropriety could exist, especially where a Parenting Coordinator's recommendations are challenged in the Superior Court, and where Parenting Coordinators are subpoenaed to testify in hearings.

(B) Mental Health Professionals. Mental health professionals must have the following qualification to serve as a Parenting Coordinator:

(i) Be licensed in the fields of psychology, psychiatry, or social work in the State of New Jersey by the appropriate State Board or Agency for at least seven years,

(ii) Be in good standing to practice in their profession with an active license issued by the State of New Jersey, and

(iii) Have a practice that is substantially devoted to conflict resolution of family matters and family therapy.

(2) Training Requirements.

(A) General. All Parenting Coordinators shall have completed a minimum of forty (40) hours of training pursuant to the requirements of subparagraph (c)(2)(C) of this Directive.

(B) Continuing Training. All Parenting Coordinators shall annually attend four (4) hours of continuing education and shall file with the Administrative Office of the Courts, as appropriate, an annual certification of compliance. To meet the requirement, this continuing education shall include instruction in ethical issues associated with Parenting Coordination practice, program guidelines and should cover at least one of the following: case management skills; Parenting Coordination; and resolution concepts and skills.

(C) Parenting Coordination Course Content. The forty (40) hours of classroom instruction for Parenting Coordinators shall include basic mediation skills as well as at least sixteen (16) hours of specialized Parenting Coordination training, which should cover: family and child development; psychological issues in separation and divorce; family dynamics; New Jersey family law; high-conflict family dynamics; parenting coordination process; techniques; domestic violence; the impact of divorce at varying developmental levels; diversity, inclusion, and cultural competency; and community resources.

(D) Domestic Violence Training. Where there is a domestic violence restraining order, the parenting coordinator must also have completed the additional training as a Domestic Violence Economic Mediator. This training incorporates specific domestic violence components, including: the history of the program; power and control; progression of abuse; the cycle of violence; and issues related to the victim and to the perpetrator.

(d) Procedures.

(1) The Order of Appointment shall specify the authority of the Parenting Coordinator and indicate the issues on which the Parenting Coordinator may make recommendations.

EXPLANATION: The NJSBA believes this section (d)(1) should be included in the Court Rule, not just the Administrative Directive, as the Parenting Coordinator's authority and scope is a critical component of the Parenting Coordination process.

(2) ~~All parties will have an opportunity to be heard.~~ **On each issue submitted to the Parenting Coordinator, each party will have an opportunity to be heard.**

EXPLANATION: The NJSBA believes the language should be clarified as noted above.

(3) Parenting Coordinators shall not have any communication with the court unless mutually agreed to by the parties. Absent mutual agreement, either party may file an application to permit the Parenting Coordinator to communicate with the court. Such communication must be on notice to the parties.

(4) A term limit for the appointment of a Parenting Coordinator shall be set forth in the order, as fixed by the court or agreed to by the parties, which term shall commence upon the parties' retention of the Parenting Coordinator. The term of appointment may be extended by the court on good cause shown or by agreement of the parties.

(5) A Parenting Coordinator shall document in writing all agreements made by the parties and all recommendations by the Parenting Coordinator, which shall be communicated simultaneously to both parties. In time sensitive circumstances, recommendations may be made orally and must be communicated to both parties, followed by written confirmation simultaneously communicated to both parties.

(6) The Parenting Coordinator shall hold an initial meeting with the parties, either jointly or separately, at the discretion of the Parenting Coordinator, and in compliance with limitations set forth in any domestic violence restraining order. The Parenting Coordinator shall define and describe for the parties in the retainer agreement, the role, limitations, and fees of the Parenting Coordinator, which shall be consistent with the Order of Appointment.

(7) Grievance Procedure. Except as provided by other applicable law, a party having a complaint or grievance shall submit a written letter to the Parenting Coordinator detailing the complaint or grievance, with a copy: to the other party (or where there is a domestic violence restraining order, the Parenting Coordinator shall serve the copy on the other party; or to both attorneys (if any), and to the attorney for the child (if any). The Parenting Coordinator shall within ~~ten (10)~~ thirty (30) days provide a written response to both parties and the attorneys, subject to the other provisions herein. Thereafter, the Parenting Coordinator at their discretion may schedule a meeting or conference call with the attorneys or with the attorneys and the parties or self-represented litigants in an effort to resolve the complaint or grievance. In situations where the grievance or complaint is not resolved by this process, the dissatisfied party may file a motion with the court.

EXPLANATION: When Parenting Coordinators respond to a party, it often requires that they locate emails and other documents reflecting prior recommendations and communications over a period of several months or more. A comprehensive response to the issue will, in all likelihood, require more than 10 days. The NJSBA respectfully submits that a 30-day timeline would be more reasonable.

(8) Compensation of Parenting Coordinator. Parenting Coordinators shall be compensated in accordance with their stated fees and for expenses incurred, which shall be clearly set forth in the Order of Appointment, as well as in the Retainer Agreement and/or in the information and materials provided to the parties at the initial conference. The parties shall pay the apportioned percentage either as agreed upon or determined by the court and set forth in the Order of Appointment.

(9) Pay Disputes. Parenting Coordinators that have not been timely paid in accordance with the Order of Appointment may bring an action to compel payment. Such action shall be made in the county in which the Order of Appointment originated and shall be commenced with the filing of a complaint in the Law Division. Nothing in this Directive prevents either party

or the court from allocating, modifying, or enforcing the parties' respective obligations to pay the Parenting Coordinator pursuant to the Order of Appointment in the Family Part matter.

(10) Parenting Coordinator Retainer Agreement/Fees. The Parenting Coordinator's retainer agreement shall set forth the fees, costs and retainer associated with the appointment. The retainer agreement must include the following information:

- (A) A description of the services and disbursements for which the parties will be responsible and how they will be billed, the Parenting Coordinator's hourly billing rate, the amount of retainer required, and how the retainer will be applied and replenished,
- (B) The method by which the fee will be computed,
- (C) The billing frequency, which shall be no less frequently than every ninety (90) days, provided services were rendered in that period, and
- (D) The payment due date.

(11) Termination of Parenting Coordinator's Appointment.

(A) The court or the Parenting Coordinator may terminate the appointment in the following instances:

- (i) the services of the Parenting Coordinator do not meet the needs of the family,
- (ii) the child has reached the age of majority,
- (iii) the parties stipulate to termination, or
- (iv) the Parenting Coordinator's fees are not being paid, or are not being paid at a time specified by the Order of Appointment.

(B) Either party may file a motion to terminate the Parenting Coordinator's appointment if the Parenting Coordinator exceeded their mandate, acted in a manner inconsistent with the approved procedures or violated professional conduct, provided the approved grievance procedure has been utilized. If the Parenting Coordinator seeks to withdraw, the request shall be granted absent extraordinary circumstances.

(e) Conflicts of Interest and Impartiality.

(1) Parenting Coordinators shall be subject to the professional standards of their respective professions.

(2) Parenting Coordinators shall be impartial and shall not discriminate based on race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap. Parenting Coordinators shall withdraw from a case if they determine that they cannot act in an impartial manner. Parenting Coordinators have a primary duty to be impartial and to advise all parties of any circumstances that create the appearance of possible bias, prejudice, or inability to remain impartial.

(3) Parenting Coordinators shall neither give nor accept a gift, favor, loan or other item of value from any party having an interest in the Parenting Coordination process.

(4) Parenting Coordinators shall not serve in a manner that presents a conflict of interest. A conflict of interest arises when any relationship between the Parenting Coordinator and either or both parties, or the subject matter of the dispute compromises the Parenting Coordinator's impartiality. Parenting Coordinators shall disclose potential conflicts of interest as soon as practical after the Parenting Coordinator becomes aware of the interest or relationship giving rise to the potential conflict.

(5) Parenting Coordinators shall not create a conflict of interest by providing any service to interested parties that are not directly related to the Parenting Coordination process.

(6) A conflict of interest shall include, but is not limited to the following:

(A) The Parenting Coordinator has a personal bias or prejudice concerning a party or a party's lawyer,

(B) The Parenting Coordinator has personal knowledge of the parties, the child or of disputed evidentiary facts concerning the proceeding, or

(C) The Parenting Coordinator, or a partner or associate in the Parenting Coordinator's firm, served as lawyer, therapist, consultant, coach or in any other mental health role or other representative capacity for the parties or child.

(7) Parenting Coordinators disqualified by the terms of this Directive may not avoid disqualification by disclosing the conflict of interest and securing the parties' consent to a waiver of the conflict.

(8) Parenting Coordinators shall attend to all matters in a timely manner.

(9) Parenting Coordinators shall not serve in dual sequential roles in a matter including as attorney, guardian ad litem, mediator, arbitrator, custody evaluator, therapist, coach, consultant, or other mental health role for either party or a child in the matter.

Parenting Coordinators should attempt to facilitate resolution of issues by agreement of the parties and shall not act in a formal mediator role or as a therapist, evaluator, or legal advisor. A Parenting Coordinator's attempt to resolve an issue does not disqualify them from making a recommendation on an issue that remains unresolved.

EXPLANATION: The NJSBA believes the first sentence of this section e(9) should be included in the Court Rule, not just the Administrative Directive, as the prohibition on serving in dual sequential roles is critical to the success of the parenting coordination process.

(f) Confidentiality/Manner of Communications.

(1) All communications by the parties or their attorneys with the Parenting Coordinator, shall not be confidential. All communications by third parties with the Parenting Coordinator shall not be confidential, unless the communication is made

from a third party who has a privileged relationship with a party or a child, in which case the issue of whether the communication remains privileged/confidential shall be explicitly addressed by the parties and the Parenting Coordinator and adjudicated by the court if unresolved. A Parenting Coordinator shall expressly advise the parties regarding the terms of this paragraph.

EXPLANATION: The NJSBA believes this paragraph should be moved verbatim to the proposed Court Rule to avoid confusion, especially since the provision mandates the Parenting Coordinator to advise the parties regarding the terms of the paragraph. The presumption against confidentiality of communications is one of the concepts that separates this process from other forms of alternate dispute resolution.

(2) The Parenting Coordinator may communicate with a party, their attorney, or any mutually agreed upon third party on an ex parte basis to the extent necessary to obtain information relevant to the Parenting Coordinator's role. The fact of such communication shall be made known to the parties as determined by the Parenting Coordinator. The Parenting Coordinator may meet with the child upon the expressed written consent of all parents/legal guardians if the Parenting Coordinator believes that this will aid in issuing appropriate recommendations.

(3) The parties shall have the right to initiate or receive oral ex parte communications with the Parenting Coordinator. The fact of such communication shall be made known to the other party contemporaneously with it occurring (or as soon thereafter as possible) in writing in a manner consistent with the Parenting Coordinator's protocols. Any party or their attorney may communicate in writing with the Parenting Coordinator. Copies of such communications will be provided to the other party unless the Parenting Coordinator determines otherwise. In those instances, the Parenting Coordinator will determine how they will convey the communication with the other parent consistent with the protocols established by the Parenting Coordinator. Copies of any documents, tape recordings or other electronic material that one party gives to the Parenting Coordinator must also be given to the other party unless the Parenting Coordinator determines otherwise. In those instances, the Parenting Coordinator will determine how the materials will be conveyed to the other party. If a crisis arises that will affect a child, the Parenting Coordinator may make a recommendation on an emergent basis, either in person or by way of an emergency conference call or by electronic means, to all parties. In cases where there is a domestic violence restraining order between the parties, communication shall be consistent with the limitations of such order.

(g) Statewide Approved List of Parenting Coordinators.

(1) The Administrative Director of the Courts, or the Director's designee, shall be responsible for reviewing and approving all Parenting Coordinator applications. Applicants must complete an application form posted on the Judiciary's website (www.njcourts.gov). Applicants who meet the professional and training requirements set forth in this Directive, shall be added to the Roster of Approved Parenting Coordinators. The roster shall be maintained by the Administrative Office of the Courts and shall be posted on the Judiciary's website.

(2) Approved Parenting Coordinators must annually submit to the Administrative Office of the Courts proof that they continue to be licensed and in good standing in their respective professions.

(3) The court may not appoint or approve the appointment of any individual to serve as a Parenting Coordinator who is not on the Statewide Approved List of Parenting Coordinators without a showing of good cause or consent of the parties and approval of the Presiding Judge of the Family Part or their designee.

Proposed Order

This matter having been opened to the court (select one) [upon consent of the parties/ pursuant to a plenary hearing] and (select one) [the court having considered the testimony and evidence presented/ the court having considered the certifications submitted by the parties and the argument of counsel] and having made (select one) [oral/written] findings of good cause to appoint a Parenting Coordinator to implement the parties' (select one) [court ordered/agreed upon] custody and parenting plan;

IT IS on this day of ___ day of _____, 202___ ORDERED as follows:

1. Appointment: _____, located at _____, New Jersey (tel: _____), is hereby appointed Parenting Coordinator for a term of _____ (date/event). The Parenting Coordinator was selected from the statewide approved list.

2. Fees and Retainer: The Parenting Coordinator will be compensated at the hourly rate of \$ _____ consistent with their retainer agreement. A joint retainer of \$ _____ will be paid to the Parenting Coordinator and the parties shall sign the Parenting Coordinator's retainer agreement, a copy of which is annexed to this Order as Schedule A, within ___ days of this Order. The parties will share the Parenting Coordinator's fees as follows: Plaintiff ___ % and Defendant ___% subject to a reallocation by application to the court. The court may seek input from the Parenting Coordinator in the event of a request for reallocation of fees and costs.

3. Role of Parenting Coordinator: The Parenting Coordinator shall implement the parties' parenting plan by facilitating the resolution of day-to-day parenting issues in a timely manner when the parties cannot resolve these issues themselves, including facilitating communication and agreement whenever possible, assisting the parties to learn strategies to avoid conflict regarding their child, reduce misunderstanding, clarify priorities, explore possibilities for compromise, develop methods of communication to promote cooperation in parenting, and making recommendations to the parties to achieve these goals. The Parenting Coordinator does not function as an attorney, guardian ad litem counselor, therapist, mediator, arbitrator, custody evaluator, therapist, coach, consultant or mental health provider for the parties, child or family.

4. No Confidentiality: Communications by the parties or their attorneys with the Parenting Coordinator are evidential, and shall not be deemed confidential. All communications from

third parties to Parenting Coordinators shall not be deemed confidential, unless the communication is made from a third party who has a privileged relationship with a party/child, in which case the issue of whether the communication remains privileged or confidential shall be explicitly addressed by the parties and the Parenting Coordinator and adjudicated by the court if unresolved. **Additionally, the parties acknowledge that consistent with this Order, the Parenting Coordinator shall abide by the terms of Rule 1:38- 3(d)(9) and -3(d)(10) and maintain confidentiality of the parties' identifying information, contact information, records and reports of any kind.**

EXPLANATION: The additional language will address a contradiction between the language in Paragraph 4, which states there is no confidentiality in information presented to the Parenting Coordinator, and the language in Paragraph 14, meant to address domestic violence situations, which indicates that some information will be kept confidential under certain circumstances.

5. Recommendations: The Parenting Coordinator shall facilitate discussion between the parties and make non-binding recommendations to the parties in the event the parties cannot reach an agreement, which shall become binding unless a party objects by filing a timely motion or order to show cause. In cases where there exists a current temporary or final restraining order between the parties, communication shall be consistent with the limitations of such order.

6. Sources of Information: Each party is ordered to provide the Parenting Coordinator with all requested information including signed releases to enable the Parenting Coordinator to communicate with collateral contacts. The Parenting Coordinator is authorized to have contact with any professional or other individual the Parenting Coordinator deems necessary to perform the duties as Parenting Coordinator including the child, therapists, physicians, childcare providers, teachers, and family members. In the event that either a collateral contact possesses privileged information or the information sought is privileged pursuant to a statute, the party has the right to oppose signing the release and shall advise the Parenting Coordinator and the other party of their objections. If the issue remains unresolved, either party may file a motion and the court shall determine whether the release is to be signed and whether and to what extent the privileged information shall remain confidential.

7. Scope: The Parenting Coordinator shall not have authority to make recommendations regarding financial issues or modify legal and physical custody. The Parenting Coordinator may make recommendations to facilitate parenting time on matters, including:

- a) Time, place and manner of pick-up and drop-off of child;
- b) Childcare arrangements;
- c) Minor or temporary alteration in parenting schedules for weeknight, weekend, holidays, vacation, and special events that will not substantially alter the parenting plan;
- d) Dates for summer vacation;

- e) The non-custodial parent's schedule and conditions of phone or other contact with the child while in the other parent's custody;
- f) Selection and scheduling of activities, and resolving conflicts between the parties concerning the child's participation in recreation, enrichment, and extracurricular activities, only after the parties have made the initial selections;
- g) Referrals to other professionals to improve family functioning, including recommendation for custody or other focused evaluations;
- h) Child's travel and passport arrangements;
- i) Equipment and personal possessions of the child, including movement of these items between households for a child's use;
- j) Clarification of provisions in parenting plans to address inadvertent gaps that may lead to conflict between the parties, including defining specific hours for pickup/drop-off and transportation during holidays;
- k) Information exchanges, including school, health, social activities, and communication about the child between the parties;
- l) Consistency in child disciplinary matters;
- m) Non-permanent significant changes in a child's appearance, including haircuts, hair color changes, dress code, manicures; and
- n) All other issues agreed upon by the parties and the Parenting Coordinator to help effectuate resolution of custody and parenting issues.

8. Protocol: The Parenting Coordinator shall determine the protocol of all communications, interviews, and sessions, including who shall or may attend the meetings. At their discretion, the Parenting Coordinator may conduct meetings with the parties, the child, and others related to the case jointly or separately, which meetings may occur by telephone, video conference or in person. All parties will have an opportunity to be heard on each issue submitted to the Parenting Coordinator. The Parenting Coordinator shall provide an agenda to the parties in the event the Parenting Coordinator initiates the request for a meeting. In no event may a party tape or record any Parenting Coordination sessions. In cases in which there is domestic violence restraining order between the parties, communication shall be consistent with the limitations of such order. The Parenting Coordinator shall document in writing all agreements made by the parties and all recommendations by the Parenting Coordinator, which shall be communicated simultaneously to both parties. In time sensitive circumstance, recommendations may be made orally and must be communicated to both parties, followed by written confirmation simultaneously communicated to both parties.

9. Communication with the Parenting Coordinator: The parties have the right to initiate or receive oral ex parte communication with the Parenting Coordinator at the Parenting Coordinator's discretion, and the fact of such communication shall be made known to the

other party contemporaneously with its occurring (or as soon thereafter as possible) in writing in a manner consistent with the Parenting Coordinator's protocols. Any party or their attorney may communicate in writing with the Parenting Coordinator and copies of such communications will be provided to the other party, unless the Parenting Coordinator determines otherwise, in which event the Parenting Coordinator will determine the means by which they will convey the communication to the other parent consistent with the protocols established by the Parenting Coordinator. Copies of any documents, tape recordings, or other electronic material that one party gives to the Parenting Coordinator must also be given to the other party unless the Parenting Coordinator determines otherwise, in which event the Parenting Coordinator will determine the means by which the contents will be conveyed to the other party. If a crisis situation arises that will affect a child, the Parenting Coordinator may make a recommendation on an emergent basis with all parties present either in person or via emergency conference call, or by e-mail to all parties. In cases in which there is domestic violence restraining order between the parties, communication shall be consistent with the limitation of such order.

10. Testimony: The Parenting Coordinator shall testify only pursuant to an order issued by a judge in this matter. The Parenting Coordinator shall be paid for all court appearances, depositions, conferences or other appearances at which the Parenting Coordinator participates in connection with these proceedings including travel time at the Parenting Coordinator's hourly rate of \$ _____, and payment of the estimated amount required shall be paid no later than 48 hours prior to testifying or appearing,

11. Termination: The court or the Parenting Coordinator may terminate the Parenting Coordinator's appointment in the following instances: the services of the Parenting Coordinator do not meet the needs of the family; the child has reached the age of majority; the parties stipulate to the termination; the Parenting Coordinator's fees are not being paid; entry of a court order; or upon expiration of the term as set forth in paragraph 14 of this order. Either party may file a motion to terminate the Parenting Coordinator's appointment whenever the Parenting Coordinator has exceeded their mandate, acted in a manner inconsistent with the approved procedures, or violated professional conduct, provided the approved grievance procedure has been utilized. If the Parenting Coordinator seeks to withdraw, the request shall be granted absent extraordinary circumstance.

12. Grievance: Except as provided by other applicable law, a party having a complaint or grievance shall submit a written letter to the Parenting Coordinator detailing their complaint or grievance, with a copy to the other party (or where there is a domestic violence restraining order the Parenting Coordinator shall serve the copy on the other party) to both attorneys (if any) and to the attorney for the child (if any). The Parenting Coordinator shall within ten (10) days provide a written response to both parties and their attorneys, subject to the other provisions herein. Thereafter, the Parenting Coordinator at their discretion may schedule a meeting or conference call with the attorneys and the parties to resolve the complaint or grievance. If the grievance or complaint is not resolved by this process, the dissatisfied party may file a motion with the court to decide the dispute.

13. Report to the Court: Parenting Coordinators shall not have any communication with the court, unless mutually agreed to by the parties **and/or except as otherwise required and/or permitted under the terms of this Order**. Absent mutual agreement, either party may file a motion to permit the Parenting Coordinator to communicate with the court and such communication will be on notice to the parties.

EXPLANATION: This additional language will address confusion about contradictory language in paragraphs 13 and 14 of the Order about whether a Parenting Coordinator can have communication with the Court. As written, under Paragraph 13, the Parenting Coordinator is instructed not to communicate with the Court unless the parties agree, while in Paragraph 14, the Parenting Coordinator is instructed to address safety concerns with the Court in writing, thereby requiring communication with the Court.

14. In cases where there currently exists a temporary or final restraining order pursuant to the New Jersey Prevention of Domestic Violence Act, it is further ordered:

- a) The victim shall be advised of the right to decline appointment of a Parenting Coordinator and that the victim has the sole option to terminate the Parenting Coordinator process.
- b) The Parenting Coordinator shall address any safety concerns with the court in writing.
- c) The Parenting Coordinator shall abide by the terms of Rule 1:38-3(d)(9) and -3(d)(10) and maintain confidentiality of the parties' identifying information, contact information, records and reports of any kind.
- d) The Parenting Coordinator shall include measures addressing the safety of the parties and any participants and shall establish protocols for meetings and communications consistent with the domestic violence restraining order.

15. The Parenting Coordinator remains subject to the child abuse reporting requirements pursuant to N.J.S.A. 9:6-8.10.

16. The Parenting Coordinator's appointment shall expire on _____, unless otherwise extended upon a showing of good cause or agreement of the parties.

17. Other Terms

J.S.C.