

Parenting Consultant Order and Stipulation Form FAQs

General

Question: Where do these forms come from?

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

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

Question: Can I “tweak” these provisions?

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

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

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

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

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

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

Answer: Attorneys should notify PCs before appointing them. We need to do more education. If you are appointed and were not notified, then you should ask the parties or attorneys to amend the order of appointment using the language you want. Many PCs get into trouble when they agree to serve under unclear or even unethical orders. The committee will make the sample Stipulation and Order available to attorneys, judges and judicial clerks free of charge.

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

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

Question: What is the difference between a Parenting Consultant and Parenting Coordinator?

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

Section XI Legal Proceedings

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

Question: What are PCs to do when they are accused of wrong doing on a case, do they have no right to testify on their own behalf? What if one party is unrepresented? An attorney or party who wants to present one side should not be allowed to do so without defense by the PC of their conduct or methods. And they certainly wouldn't subpoena someone that they don't want the Judge to hear from.

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

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

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

XIII Review by the Court and/or Appeals

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

Question: If the PC is not a party, my understanding is that they cannot bring nonpayment issues to the court under the same court file.

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

XIII Review by the Court and/or Appeals

(Parties agree that the Court shall review the decisions of the PC using the abuse of discretion standard.)

Question: Where does one find this standard?

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

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

Abuse of Discretion

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

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

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

Practice Questions

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

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

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

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

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

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

STATE OF MINNESOTA
COUNTY OF *****

DISTRICT COURT
***** JUDICIAL DISTRICT
FAMILY COURT DIVISION

In Re the Marriage of:

Court File No. *****

*****,

Petitioner,

**MODEL STIPULATION AND
ORDER
TO APPOINT PARENTING
CONSULTANT/COORDINATOR**

and

*****,

Respondent.

The above-entitled matter came duly before the undersigned, the Honorable _____, Judge of _____ County District Court, on the __ day of _____, 20__, at the _____, _____, Minnesota. Based on the stipulated agreement of the parties as contained in this Order and based upon the file and prior proceedings herein, the Court issues the following **FINDINGS AND ORDER:**

I. FINDING

A. The parties have agreed that a Parenting Consultant (PC) is necessary to assist them in resolving disputes regarding their minor children.¹

¹ “Parenting Consultant” and “Parenting Coordinator” are interchangeable terms. “Parenting Coordinator” is preferred nationally, and “Parenting Consultant” is preferred in Minnesota. Please see the “Guidelines for Parenting Coordination” at http://www.afccnet.org/resources/standards_practice.asp.
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- B. The parties have agreed that the PC will be _____ .
- C. The PC's address is _____
_____.
- D. _____'s phone number is _____.

II. DEFINITION

- A. Pursuant to Rule 114.02(a)(10) of the Minnesota Rules of Practice – District Courts, which allows the parties to create an ADR process, _____ is hereby appointed the PC for the parties under the following terms and conditions, and shall be considered a person presiding at an alternative dispute resolution proceeding pursuant to Minnesota Statute § 604A.32.
- B. The PC is a person or persons appointed by the Court after the agreement of the parties to assist them in the resolution of conflicts regarding their children.
- C. The confidentiality provisions under Rule 114 do not apply to the PC.
- D. The PC does not provide therapy or legal advice.

III. TERM

- A. The parties agree to have the PC for **(CHOOSE ONE)**:
1. A term of _____; or
 2. Until children's emancipation; or
 3. Other mutual agreement of the parties.

B. The PC retains the discretion to terminate service at any time for any reason.

C. If a different PC is needed because the selected one is unavailable, does not agree to serve, or is removed by written agreement of the parties, a new PC shall be named by mutual agreement of the parties or by obtaining a list of five (5) qualified persons from the present PC and alternately striking names. Petitioner shall strike the first name. The parties may jointly agree on another selection method if both are in agreement.

IV. DUTIES AND RESPONSIBILITIES

A. The PC shall have the duty and responsibility to assist the parties in resolving all child-related issues submitted for resolution, except for those issues specifically excluded by paragraph B, below.

B. The PC is prohibited from addressing spousal support, child support and permanently modifying custody labels unless the parties agree, in writing, that the PC may address such issues and the PC agrees to address such issues.

V. SCOPE OF AUTHORITY

A. The PC shall have authority to perform the following, which are meant to be inclusive, but not limiting:

1. Authorize “trading” of time with the children where one party requests and the other party declines;
2. Award compensatory time to one parent because the other parent did not permit the children to be with the parent who had custodial or access rights under the existing court order, prior decision of a PC or Parenting Time Expeditor (PTE);
3. Interpret ambiguities or unclear provisions in the parties’ stipulations and/or court orders;

4. Decide parenting issues that were not contemplated by the parties when they addressed parenting issues in previous stipulations or are not addressed by an existing court order or prior decision of the PC;
5. Decide allocation of fees and expenses related to parenting issues (such as fees for extracurricular activities, but excluding child support) that were not determined by a court order or prior decision of a PC;
6. Decide alterations in the access schedule, including transportation;
7. Decide revisions to previously decided parenting issues as needed to meet changing circumstances;
8. Decide the holiday and vacation access schedule between the parties and the minor children to the extent the holidays and specific vacation dates have not been determined by a court order, prior decision of a PC or PTE, or are no longer workable due to a change in circumstances;
9. Decide school attendance, child care, activity, vacation and summer camp issues, including dates and times for the same, to the extent the specific vacation dates have not been determined by a court order, prior decision of a PC or PTE, or are no longer workable due to a change in circumstances;
10. Decide the appropriate school placement for the child(ren);
11. Consult with outside sources, such as teachers, therapists, physicians, attorney for either party, family members, etc., and review school records and speak to, or review records of, therapists with whom the individual and/or child(ren) have met;
12. Require independent evaluations and psychological testing of the parties and/or child(ren) if the PC determines it would be helpful to the resolution of problems;
13. Communicate, obtain and/or provide information with any person without the necessity of securing a release from the parties;

14. Require that a parent or child(ren) participate in therapy, anger management, etc., and select the therapist, if therapy or professional assistance would be helpful to the resolution of the problems or assist the child(ren);
15. Decide issues with input from only one party, where the other party has failed to participate in the decision making process; and,
16. Make recommendations, memorialize agreements and make decisions, including the authority to impose consequences for non-compliance.

B. The PC may require that the parties enter into a safe harbor agreement with a mental health provider before beginning services, as provided in item X below (“Safe Harbor”).

VI. PROCESS FOR REQUESTING ASSISTANCE FROM PC

- A. The parties shall first attempt to resolve the issues themselves before requesting assistance from the PC.
- B. Upon notification by a party that there is an issue in controversy, the PC will meet with the parties by telephone, in person, or by other means as determined appropriate by the PC, to discuss the issue in controversy. The PC will review all appropriate information relating to the issue in controversy, including, but not limited to, any existing and prior court Orders and any agreements of the parties.
- C. The PC may meet and communicate with the child(ren) as the PC deems appropriate.
- D. Both parties shall participate in the dispute-resolution process defined by the PC and governed by Minnesota Rules of Practice, Rule 114 in accordance with the principles of due process. The process will include, at a minimum, the opportunity for each to express his or her opinion. In the event a party does not attend a meeting or otherwise fails to respond in a timely manner, the PC may deem the party’s participation waived. The PC may also proceed by joint or individual in-person meetings, telephone, written correspondence or other means determined appropriate by the PC as the situation

warrants. If a party fails to provide input into a decision of the PC after a reasonable period of time following a request for input, the PC may resolve this issue in controversy without input from that parent.

E. Once a PC has agreed to make a decision about an issue, that decision shall be made promptly. All decisions of the PC shall be made promptly in writing. Decisions of the PC are by their very nature often made in circumstances involving time constraints, and possibly emergencies; therefore, these decisions may, initially, be made orally, but must be communicated to both parties and subsequently documented in writing. These decisions are binding when made.

VII. DUTIES OF PARTIES

A. Both parties shall cooperate in good faith to resolve the matter(s) in dispute with the assistance of the PC.

B. To the extent a release is required by any non-party to disclose information to the PC, both parties shall sign all releases necessary for the PC to access any information the PC deems necessary.

C. The parties agree to abide by all decisions that are made by the PC, unless modified by subsequent court order, including during periods in which a motion is pending before the court.

D. It is the responsibility of the parents to provide the PC with all necessary information to stay in communication with them, including all phone numbers in order of priority for communication; mailing addresses; residence; and priority e-mail address.

E. The PC may consult with other professionals as necessary to conduct their duties. The parents shall execute all necessary authorizations to permit such communication without limitation.

F. If one or both of the parties disagree with the decision of the PC, that party must obtain a court hearing date to contest the PC's decision.

1. The party in disagreement with a decision of the PC shall bring a motion to contest the PC's decision.
2. The motion must be brought within fourteen (14) days of receiving the written decision.
3. The PC shall receive all pleadings at the time of filing.
4. The party shall be obligated to file and serve pleadings on the motion within the time frame of the law and procedural rules governing Family Court.
5. Failure to seek a hearing date is a waiver of objection.

VIII. PAYMENT OF FEES

- A. The parties agree to pay the fees and retainer as required by the PC fee agreement.
- B. It is within the discretion of the PC to allocate fees and costs differently if the PC determines that one party has unreasonably contributed to the costs or abused the process. The PC may allocate the fees, costs and retainer in a manner different than described above when the PC deems appropriate.
- C. The PC reserves the right to suspend all services, including provision of any written documentation, until payment of any unpaid balance and required retainer is made.
- D. In the event one party does not pay his or her share of the fees, costs and retainer, the other party may pay the full retainer requested and bring a motion seeking reimbursement for the non-complying party's share of the retainer.
- E. It is understood that despite the fact that the PC may make decisions or orders in favor of one party, both parties will continue to be responsible for the payment of fees associated with such services.

IX. CONFIDENTIALITY AND PRIVILEGE

- A. This alternative dispute resolution process is not confidential.
- B. There is no privilege accorded to the PC pursuant to law, and the confidentiality provisions of do not Rule 114 apply.
- C. All communications with the parties and others with whom the PC has conferred or discussed the case are subject to disclosure, with the exception of the communications identified in item X (“Safe Harbor”) below.
- D. Statements made to the PC by the attorneys and/or parties may lose the protection of the attorney-client privilege.
- E. Licensed mental health professionals providing services as a PC are mandated to report any:
 - 1. Suspected maltreatment or abuse of children (Minn. Stat. § 626.556); and,
 - 2. Suspected maltreatment or abuse of vulnerable adults (Minn. Stat. § 626.557).
- F. Licensed mental health professionals also have a “Duty to warn” as defined by Minn. Stat. § 148.975.
- G. An attorney PC is not a mandated reporter of child maltreatment but has the discretion to make such a report.

X. SAFE HARBOR

- A. If the child(ren) are receiving mental health services, the PC may seek information from his/her/their mental health provider(s).
- B. In order to preserve the safety and confidentiality of the child(ren)’s therapeutic environment, it is essential that the child(ren) feel free to speak openly with his/her/their

therapist(s) without fear of their statements being disclosed, so that the therapist's office may serve as a "safe harbor" for the child(ren).

C. Information obtained by the PC which he or she determines is or could be harmful to the child(ren) or their relationship with a treating professional or parent may be, within the discretion of the PC, made unavailable to a parent or counsel for a parent.

D. Any information given to the PC by (a) mental health provider(s) for the child(ren) will be maintained as confidential by the PC, unless the PC and mental health professional agree otherwise.

E. Any documents containing information provided by (a) mental health professional(s) treating the child(ren) shall be kept in a file separate from the PC file.

F. Neither parent shall, nor will either parent permit his or her attorney to, subpoena the information contained in this separate file.

G. Any party (or his or her attorney) who seeks to interrogate the PC about or to subpoena the information in this separate file, shall be liable for all attorney fees and costs incurred to respond to such requests or to quash a subpoena.

H. If the PC makes a decision based on input from the therapist(s), the PC reserves the right to document this decision stating only "I have decided this based on input from the child(ren)'s therapist," without further explanation.

I. Only upon order of the court will the PC provide the information in the separate file to the court for an *in camera* review with an explanation of the risk of harm.

XI. LEGAL PROCEEDINGS

A. The PC shall not be precluded from participation as a witness or collateral contact in a custody or parenting time study or inquiry involving either party. Both parties may,

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upon making payment as provided by the law and rules of Court pertaining to experts, use the PC as a collateral resource and/or call the PC as a witness to testify in any proceeding involving the child(ren) or the subject matter of the PC's work with the parties.

B. The PC is not a party to the proceedings.

C. The PC does not communicate with the Court except by subpoena or court order.

XII. REVIEW BY THE COURT AND/OR APPEALS

A. The procedure below shall be followed and neither of the parties may apply to the Court for relief from the decision of the PC, except as provided below and in item VII(F) (1-5).

B. If one or both of the parties disagree with the decision of the PC, that party must obtain a court hearing date to contest the PC's decision.

1. The party in disagreement with a decision of the PC shall bring a motion to contest the PC's decision.
2. The motion must be brought within fourteen (14) days of receiving the written decision.
3. The PC shall receive all pleadings at the time of filing.
4. The party shall be obligated to file and serve pleadings on the motion within the time frame of the law and procedural rules governing Family Court.
5. Failure to seek a hearing date is a waiver of objection.

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

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

XIII. NOTICE TO PC

A. The attorneys, or parties if there are no attorneys, shall provide the PC with a fully executed copy of this Stipulation and Order.

XIV. APPOINTMENT CONTINGENCY

A. The appointment of the PC is contingent upon both parties' execution of the PC's fee agreement and meeting the requirements of the fee arrangement.

STIPULATION

The parties and their counsel stipulate their intent that the Court sign and enter the above Stipulation as its Order.

Petitioner

Respondent

Subscribed and sworn to before me
this ____ day of _____, 20__.

Subscribed and sworn to before me
this ____ day of _____, 20__.

Notary Public

Notary Public

APPROVED AS TO FORM:

ATTORNEY FOR PETITIONER

ATTORNEY FOR RESPONDENT

ORDER

The Court, having reviewed the Stipulation herein of the parties and finding the same to be fair and equitable and in the best interests of the minor children of the parties, and thereafter being fully advised in the premises, does hereby enter the Stipulation of the parties as its Order.

Dated: _____

Judge of District Court