# I.R.C.P. 16.l. Appointment of Parenting Coordinator in Child Custody and Visitation Disputes.

**Rule 16(l). Appointment of Parenting Coordinator in Child Custody and Visitation Disputes**

**A. In General.**

1. Definitions.

a. A “Parenting Coordinator” is a qualified impartial person appointed by the court either by stipulation of the parties, motion by one party or on its own motion, to perform any or all of the following functions:

i. decide certain discretionary issues specified in the order of appointment relating to custody of a minor child or minor children;

ii. assist the parties with reaching an agreement to resolve certain custody issues; or

iii. make recommendations to the court and/or parties.

b. An “order of appointment” is the court order appointing the Parenting Coordinator which shall determine the scope of the Parenting Coordinator’s authority and duties in the case.

c. The “best interest of the children” is defined by Section 32-717, Idaho Code, and nothing in this rule is intended to supersede, replace, or invalidate Section 32-717.

2. Statement of Purpose. The purpose of appointing a Parenting Coordinator in a given case should be to help parents (i) implement a court order regarding child custody, (ii) comply with a court order regarding child custody, (iii) resolve day-to-day issues that arise regarding physical and legal custody of their child/ren, (iv) learn healthy and effective methods of communication and ways to safely exchange their child/ren, and (v) reduce re-litigation where high conflict threatens the safety or well-being of their child/ren.

3. Exceptional Circumstances. A reference to a Parenting Coordinator shall be the exception and not the rule. Such a reference shall be made only when:

a. the issues appear to be intractable or have been the subject of frequent re-litigation;

b. the well-being of a minor child is placed at risk by the parents' inability to co-parent civilly;

c. one or both parents has/have committed domestic violence;

d. one or both parents is/are chemically dependent or mentally ill; or

e. other exceptional circumstances require such appointment to protect the child's best interests.

**B. The Process for Appointing a Parenting Coordinator.**

1. Authority. The court is authorized to appoint a Parenting Coordinator pursuant to Idaho Code Section 32-717D and this rule.

2. Procedure. The appointment shall be made by an order of appointment, after having found that the circumstances specified in Paragraph A.3 of this rule are present, based upon either (i) a stipulation or agreement filed by the parties, or (ii) after hearing on a motion filed by either a party or the court. If the court orders the appointment of a Parenting Coordinator on its own motion, it shall give the parties at least seven (7) days' advance notice of a hearing on the motion.

3. Timing. The appointment of a Parenting Coordinator may be made at any stage in the proceedings after entry of an order, decree, or judgment establishing child custody.

4. Selection. The Parenting Coordinator shall be a person selected by stipulation of the parties, or a qualified Parenting Coordinator who has met the requirements set forth in Paragraph I of this rule.

5. Duration. The term of the Parenting Coordinator's service shall be designated in the order of appointment but shall not exceed the date on which the youngest minor child subject to the order of appointment reaches the age of majority.

6. Removal and Resignation.

a. Either party may petition the court for termination of the Parenting Coordinator's appointment whenever the Parenting Coordinator has exceeded the scope of his/her authority, abused his/her discretion, or acted in a manner inconsistent with this rule.

b. The court may terminate the order of appointment at any time if the parties stipulate to such termination or it finds that further efforts by the Parenting Coordinator would be contrary to the best interests of the children.

**C. Scope of the Parenting Coordinator's Authority.**

The order of appointment shall specify the authority and duties of the Parenting Coordinator. An order of appointment that fails to identify the Parenting Coordinator's authority and duties grants only those powers and duties identified in Idaho Code Section 32-717D(3). The order of appointment shall not delegate to the Parenting Coordinator the court's exclusive, continuing jurisdiction to modify a child custody or child support order. The Parenting Coordinator shall have no authority to make decisions regarding child support issues.

1. Order of Appointment Based on a Stipulation of the Parties. The parties may delegate to the Parenting Coordinator by stipulation the authority to resolve any legal and/or physical custody issues regarding their child/ren as set forth in their stipulated order.

2. Order of Appointment Based on a Motion Filed by the Court or a Party. If the order of appointment is made by the court on its own motion or the motion of a party, then the Parenting Coordinator may assist the parties with reaching an agreement on any issue regarding legal and physical custody of their child/ren; however, absent a stipulation of the parties, the Parenting Coordinator's authority to

make a decision is limited to any or all of the following child custody issues if the decision(s) is(are) consistent with the controlling child custody order, decree or judgment:

a. the time, place and manner of pick-up and delivery of the children;

b. child care arrangements, including babysitting;

c. the selection of an appropriate supervisor, if supervised visitation is ordered;

d. the selection of which parent may enroll a child in school;

e. minor alterations in the parenting schedule with respect to weeknight, weekend, holidays or vacation which do not substantially alter the basic time share allocation;

f. scheduling “make up” time in the event one parent is denied court-ordered custodial time by the other parent, in lieu of the party filing a motion for contempt based on the denial of that custodial time;

g. when a particular child shall commence overnight visitation with a parent;

h. the extent to which significant others and relatives may participate in visitation, including any limitations on the role of significant others and relatives;

i. the first and last dates for school break visitation including winter, summer and spring break;

j. the schedule and conditions of telephone and/or virtual communication with the children;

k. the manner and methods by which the parties may communicate with each other;

l. the approval of out-of-state travel plans by a parent or guardian;

m. alteration of the child/ren’s appearance including clothing, haircuts, piercings and tattoos;

n. children’s travel and passport arrangements;

o. equipment and personal possessions of the child;

p. the attendance by one or both parents at parenting classes;

q. which parent may authorize counseling or other health care treatment for a child;

r. the authorization of the child/ren’s participation in extracurricular activities, including issues related to transportation and the allocation of costs for each activity; and

s. any other issue(s) submitted for immediate determination by agreement of the parties, including clarification of inconsistencies or ambiguities in the controlling custody order, decree or judgment.

3. Recommendations. If authorized by the order of appointment, a Parenting Coordinator may also make recommendations to the parties and the court, or to the parties only, regarding (i) any legal and/or physical custody issue pertaining to the child/ren of the parties, (ii) the appointment of counsel for the child/ren, and/or (iii) any financial issue related to the child/ren of the parties, including child support. The issue(s) about which a Parenting Coordinator may make recommendations shall be identified in the order of appointment. Recommendations made by a Parenting Coordinator are not binding on the parties or the court and shall not have the effect of a decision under paragraph F below. The court shall not issue an order based on a recommendation from a Parenting Coordinator absent a properly filed (a) stipulation by the parties or (b) motion by one of the parties in accordance with the Idaho Rules of Civil Procedure.

4. Access to Information. The order appointing the Parenting Coordinator, whether based on a stipulation or not, shall grant the Parenting Coordinator reasonable access to all potentially relevant records, documents and information related to the minor child/ren of the parties, except information that is protected by an attorney-client privilege. The Parenting Coordinator shall also be given access to communicate directly with the minor child/ren if, in the Parenting Coordinator's discretion, such access is necessary to decide an issue within the scope of his/her appointment.

**D. Duties of the Parenting Coordinator.**

1. Primary Duty. The Parenting Coordinator has a primary duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality.

2. Other Duties. During the initial conference with either or both parties, the Parenting Coordinator shall define and describe, in writing, his/her role established by the order of appointment. The description should include the following:

a. the difference between a Parenting Coordinator and other forms of conflict resolution including therapy, counseling, and mediation;

b. the circumstances under which the Parenting Coordinator will meet alone with either of the parties or with any other person;

c. the lack of confidentiality of the proceedings and, if applicable, the lack of any privilege against disclosure;

d. the duties and responsibilities of the parties;

e. the manner of service most likely to give each party notice of any or all of the Parenting Coordinator's decisions;

f. the fact that the resolution of any disagreement not reached by mutual consent of the parties may be decided by the Parenting Coordinator subject to review by the court upon motion or petition of either party;

g. the parties' right to seek independent legal counsel prior to resolving the issues or in conjunction with formalizing an agreement;

h. the information necessary for defining and resolving the disputed issues; and

i. the duty to keep an adequate record of contacts with the parties and other interested persons in the case.

3. Submission of Reports. The Parenting Coordinator may report to the court in writing the status of the case, including, but not limited to, those specific duties set forth in the Parenting Coordinator's order of appointment so long as copies of such reports are timely served upon both parties. The order appointing the parenting coordinator shall require at least one status report to be made to the court and to the parties by the Parenting Coordinator every six months.

**E. Proceedings Conducted by the Parenting Coordinator.**

The order of appointment shall specify the procedure to be followed by the Parenting Coordinator. The procedure specified should be simple, swift, and inexpensive. The parties will be given an opportunity to be heard on every issue submitted to the parenting coordinator but the procedure to be followed can be informal, and need not comply with the rules of evidence and procedure. Unless requested by the parties, no record need be made except for the Parenting Coordinator's decision. In emergencies and other circumstances involving severe time constraints, decisions may be made orally but in a fashion communicated to both parties and followed by written confirmation within a reasonable time thereafter.

1. Communications from Parties. The Parenting Coordinator shall control the method and manner by which the parties communicate with him/her, which may include ex parte communication consistent with the circumstances set forth in the Parenting Coordinator’s duties in paragraph D above.

2. Non-Confidentiality. All decisions made by the Parenting Coordinator, and all information on which his/her decisions are based (including all information submitted by the parties to the Parenting Coordinator and obtained by the Parenting Coordinator from any source), are not confidential in the sense that they may be disclosed to the parties and to the court. Third-party and public access to such decisions and information shall continue to be governed exclusively by Rule 32, I.C.A.R.

**F. Effect of Parenting Coordinator’s Decision(s).**

Every decision made by a Parenting Coordinator with respect to matters submitted to him/her pursuant to the order of appointment is effective immediately upon service of the decision on the parties. “Effective” means that it shall be an affirmative defense to a motion for contempt if a party can show that his/her act or omission, while in violation of a controlling custody order, decree or judgment was nevertheless in compliance with a subsequent decision made by a duly appointed Parenting Coordinator. If neither party has filed a timely motion to set aside or modify a decision as set forth below, then the Parenting Coordinator may (or, if requested by a party, shall) submit to the court a copy of the decision and a form judgment or decree. If the Parenting Coordinator submits a proposed judgment to the court based on a decision, s/he shall also file with the court a certificate of service that identifies the date on which s/he served each party with the decision along with a description of the manner of service. Thereafter, if the court determines that the above requirements have been met, it may enter the judgment forthwith and the judgment shall thereafter be enforceable by contempt.

**G. Manner of Service of the Parenting Coordinator’s Decision.**

The Parenting Coordinator’s decision shall be in writing and served on the parties by the means most likely to give them notice including (i) hand delivery, (ii) email, (iii) telefacsimile, or (iv) regular mail. Service is complete upon mailing, delivery or transmission by electronic means, as the case may be.

**H. Judicial Review - Process.**

Within fourteen (14) days after the Parenting Coordinator has served his/her decision on the parties, either party may file a motion with the court to set aside or to modify the Parenting Coordinator’s decision. A party who files a motion shall also serve the other party and the Parenting Coordinator with the motion and any supporting affidavit(s) and legal memoranda by the method most likely to

give him/her notice under the circumstances of the case as set forth above. The filing of a motion does not stay implementation of the decision unless the court orders otherwise. Failure to file a timely motion shall constitute a waiver of all objections to the Parenting Coordinator's decision.

1. Limited Bases for Review. The only bases on which a party may file a motion to set aside or modify a decision by the Parenting Coordinator are as follows:

a. the Parenting Coordinator exceeded the scope of his/her authority provided in the order of appointment; and/or

b. the Parenting Coordinator abused his/her discretion in making the decision.

2. Standards of Review. A motion based on subsection 1. A. above must show by clear and convincing evidence that the Parenting Coordinator exceeded his/her scope of authority in reaching the decision. A motion based on subsection 1.b. above shall be reviewed by an "abuse of discretion" standard as defined by Idaho law.

**I. Qualifications and Training.**

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), 16(j)(6)(C)(i) and (ii) of the Idaho Rules of Civil Procedure.

2. Parenting Coordinators must have participated in at least twenty (20) hours of training in domestic violence and lethality assessment as set out in I.3 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.

3. 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) 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: (i) Idaho Psychiatric Association; (ii) Idaho Psychologists Association; (iii) Idaho Nursing Association; (iv) Idaho Association of Social Workers; (v) Idaho Counselors Association; (vi) Council on Domestic Violence and Victim Assistance; (vii) Idaho State Bar; (viii) Idaho Supreme Court; (ix) an accredited college or university; or (x) 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.

4. If the application indicates the applicant lacks any of the necessary qualifications the application will be conditionally rejected. The applicant will be provided thirty (30) days after the conditional rejection to provide any additional documentation concerning his or her qualifications or criminal history. The rejection shall become final thirty (30) days after the conditional rejection unless the Supreme Court determines after reviewing any additional documentation submitted that the applicant is qualified and fit to perform as a Parenting Coordinator.

**J. Compensation.**

A Parenting Coordinator shall be compensated at his/her regular fees and expenses, which shall be clearly set forth in the information and materials provided to the parties. Unless other arrangements are made among the parties or ordered by the court, the interested parties shall be responsible for a pro rata share of the Parenting Coordinator's fees and expenses, commensurate with their respective contributions to total child support. If a Parenting Coordinator is not paid, the court, upon motion of the Parenting Coordinator, may order payment. Any dispute regarding payment of the fees and costs of the Parenting Coordinator shall be subject to review by the court upon request of (i) the Parenting Coordinator or (ii) either party.

**K. Immunity.**

The Parenting Coordinator has qualified judicial immunity in accordance with Idaho law as to all acts undertaken pursuant to and consistent with the order of appointment.

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