

**GUIDELINES ON THE PRACTICE OF
PARENTING COORDINATION IN
SOUTH AFRICA**

**(Compiled by Dr Lynette Roux, Prof Leentjie de Jong, Dr Ronel Duchon, Mr
Laurie Greyvenstein, Mrs Irma Schutte, Adv Liza Segal and Mrs Astrid
Martalas)**

FOREWORD

- A.** These Guidelines for Parenting Coordination in South Africa have been developed from the Guidelines for Parenting Coordination originally created in 2005 by the interdisciplinary Association of Family and Conciliation Courts (“AFCC”) Task Force on Parenting Coordination in the United States of America, the Guidelines for Parenting Coordination subsequently adapted in 2011 by the British Columbia (“BC”) Parenting Coordinators Roster Society in Canada and the Guidelines for the Practice of Parenting Coordination drafted by the American Psychological Association (“APA”) in 2011.
- B.** To alleviate the negative effects of on-going high-conflict, litigious, co-parenting matters on children, our court system, parents and families who form the subject matter of such litigation, the new legal-psychological hybrid form of alternative dispute resolution, namely parenting coordination, has been introduced in practice. In South Africa, this process was not initially termed “parenting coordination”, but became known as “facilitation” in the Western Cape¹ and “case management” in Gauteng.²
- C.** Essentially the same intervention has different names in different parts of the country. Accordingly, it is strongly recommended that the internationally accepted term “parenting coordination” be used in South Africa.
- D.** As parenting coordination is still an evolving field, the consistent use of the term “parenting coordination” is advisable for the sake of continuity and comprehensiveness of professional role development and consistency of practice across South Africa.
- E.** Although South Africa presently has no legislation providing expressly for the appointment of a parenting coordinator (“PC”) to assist parties in the resolution of parenting disputes in high conflict matters, it is submitted that our courts nevertheless have the necessary authority to refer such parties for parenting coordination, even in the absence of an agreement between the parties, where the appointment of a PC will be in the best interests of the

¹ See *Schneider v Aspeling* 2010 3 All SA 332 (WCC); *CM v NG* 2012 4 SA 452 (WCC).

² See *Hummel v Hummel* (SGJ) unreported case no 06274/2012 of 10 September 2012.

children.

- F.** It is argued that where a court has inherent authority as upper guardian of all children, to ensure that the best interests of children are maintained, parenting coordination could be sustained.³ Our High Court, which is the upper guardian of all children,⁴ may therefore make any decision that is in the best interests of children, including appointing a PC so as to minimise the negative impact of conflict and ongoing litigation on the children, either by agreement between the parties to prevent future conflict or in matters for litigious, high-conflict parents.
- G.** Insofar as the Civil Regional Courts and the Children's Courts are concerned, it is argued that:
- a. in terms of section 29(1) of the Children's Act 38 of 2005, ("*the Children's Act*") jurisdiction is conferred upon these courts in respect of matters pertaining to parental responsibilities and rights agreements, court-assigned contact, care and guardianship as well as the suspension, termination, extension or circumscription of parental responsibilities and rights;
 - b. section 45(1) of the Children's Act has further substantially broadened the jurisdiction of the Children's Court;
 - c. section 45(3) has placed the Civil Regional Court on par with the High Court in respect of children's issues;
 - d. both the Children's Court and the Civil Regional Courts in terms of section 9 of the Children's Act and in terms of section 28(2) of the Constitution of the Republic of South Africa, 1996 ("*the Constitution*"), are to apply the standard that the child's best interest is of paramount importance.
 - e. there are several provisions in the Children's Act that could possibly be relied upon in support of the appointment of a PC in circumstances where the child's best interests require such an appointment. These include, *inter alia*,:
 - i. section 2(d) of the Children's Act, which has as one of its objects,

³ See the argument on behalf on the applicant in *Hummel v Hummel* (SGJ) unreported case no 06274/2012 of 10 September 2012 para 14. See also *Schneider v Aspeling* 2010 3 All SA 332 (WCC) and *CM v NG* 2012 4 SA 452 (WCC) where the court in both cases ordered the appointment of a facilitator without any reference to an agreement between the parties on such appointment.

⁴ See *Calitz v Calitz* 1939 AD 56; Heaton *South African Family Law*(2010) 302; s 45(4) of the *Children's Act* 38 of 2005.

the making of provision for “structures, services and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children”;

- ii. section 6(2)(a) of the Children’s Act, all proceedings, actions or decisions in a matter concerning a child must respect, protect, promote and fulfil the child's rights set out in the Bill of Rights (Section 28(1)(a)-(i)) and the best interests of the child standard (Section 28(2) the Constitution);
- iii. section 6(4)(a) of the Children’s Act, in any matter concerning a child, an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided;
- iv. section 7(1)(n) of the Children’s Act, one of the factors that must be taken into consideration whenever a provision of the Act requires that the best interests of the child standard be applied, is a consideration of which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.⁵
- v. Furthermore, Retired Judge Goldstein is of the opinion that sections 23 and 28, of the Children’s Act, which deal with court-assigned contact and care to interested persons and the extension and suspension of parental responsibilities and rights respectively, are wide enough to encompass the court’s power to appoint a third person in *loco parentis* with decision-making powers.⁶ Judge Goldstein’s argument is therefore that parenting coordination is not so much a delegation of judicial authority but rather an extension of the parents’ parental responsibilities and rights. It is suggested that a PC will be regarded by the court as a person having sufficient interest in the care, well-being or development of a child to approach the court in terms of these two sections of the Act.

H. Further support for the appointment of a PC could arguably be found in section 38 of the Constitution, which addresses the need for a court to craft a remedy for every right that the Constitution confers upon an individual.⁷

⁵ The last-mentioned section was also relied upon by the applicant in *Hummel v Hummel* (SGJ) unreported case no 06274/2012 of 10 September 2012 para 12 in support of the appointment of a PC.

⁶ Goldstein E "Facilitation – Did *Hummel v Hummel* Do Children any Favours?" in Clarks Attorneys *1st Annual Johannesburg Conference – Excellence in Family Law: Delivering Clients the Service They Deserve* (unpublished conference proceedings 2014) 67-68.

⁷ See para 14 of *Hummel v Hummel* (SGJ) unreported case no 06274/2012 of 10 September 2012.

- I.** It is therefore submitted that there is ample authority to support the appointment of a PC by our courts, even in the absence of an agreement between the parties to appoint a PC.
- J.** The mandate⁸ of the Task Force on the Practice of Parenting Coordination in South Africa is to:
- a. Make proposals that assist in unifying and regulating the practice of parenting coordination (facilitation and case management) in the public interest across the country;
 - b. propose standards for competent and ethical practice of parenting coordination;
 - c. promote excellence among PCs;
 - d. ensure that the best interests of the child standard is consistently applied;
 - e. ensure that children participate in the parenting coordination process and, where appropriate, express their views as provided for in sections 10 and 31 of the Children’s Act as well as regulation 11(1) to the Act;
 - f. ensure that in terms of section 6(5) of the Children’s Act as well as regulation 11(2) to the Act children are informed of any action or decision taken in a matter concerning them which significantly affects such children.

K. DEFINITIONS

Where terminology, currently defined in Chapter 1 of the Children’s Act, section 1 of the Domestic Violence Act 116 of 1998 or in any other applicable legislation is used in these Guidelines, the definitions in the respective Acts shall apply.

- a. Accreditation: the recognition of maintaining standards requisite for the membership of a mediation organisation (such as the South African Association of Mediators (“SAAM”), the Family Mediation Association of the Cape (“FAMAC”) and the Kwazulu-Natal Association of Family Mediators (“KAFAM”)) involving qualifications, training, supervision and experience as set by the National Accreditation Board for Family Mediators (“NABFAM”).

⁸ Mandated by SAAM (South African Association of Mediators)

- b. Adversarial process: a legal system involving two opposing parties, each attempting to persuade a judge to rule in favour of his or her position.
- c. Agreement between parties to appoint a PC: In the absence of a court order, the parties pertaining to the children may enter into an agreement between themselves to appoint a PC.
- d. Alternative dispute resolution (ADR): a collective term for the process of resolving disputes outside of the adversarial system with or without the assistance of a third person.
- e. Directive: a decision reached by a PC, after a process of attempting to achieve an agreement between parties regarding a specific dispute(s), has failed. A directive is binding unless and until it has been set aside or varied by a court of competent jurisdiction.
- f. High-conflict relationship: a relationship where the parties demonstrate a pattern of ongoing disagreement, litigation, anger and distrust, (which may be accompanied by verbal abuse, physical aggression or threats of physical aggression) and experience difficulties in communicating and cooperating with one another in the care of their children.
- g. Party/parties: co-holder/(s) of parental responsibilities and rights, more often than not the biological parents of the children.
- h. PC agreement: the agreement between the parties and the PC stipulating various aspects of the role and function of the PC as well as certain administrative aspects of the parenting coordination process.
- i. Recommendation: A recommendation made by a PC to the parents and/or court on all issues where the parents agreed that the PC should only be entitled to make recommendations and not to issue directives; or a recommendation made by a PC to parents and/or the court on issues regarding which the PC is specifically prohibited from issuing directives (see guideline 9.5.3), or in circumstances where the PC elects to make a recommendation notwithstanding the fact that he/she is permitted to issue a directive. A recommendation is not binding unless

it is agreed upon between the parties or made an order of a court of competent jurisdiction.

L. OVERVIEW AND TERMS USED IN THE PARENTING COORDINATION PROCESS

- a. Parenting coordination is a quasi-legal, quasi-mental health, dispute resolution process which combines assessment, conflict management, education, facilitation, case management, mediation and limited decision-making functions.
- b. The parenting coordination process and the duties of the PC must primarily be focussed on the best interests of the child standard as set out in section 28(2) of the Constitution and section 9 of the Children's Act.
- c. The process is reactive in the sense that it is initiated by the raising of a dispute by one or both parties unless the best interests of the child requires a pro-active approach on the part of the PC.
- d. Parenting coordination is not arbitration.
- e. The objective of the parenting coordination process is to assist disputing parties in protecting and sustaining safe, healthy and meaningful parent-child relationships by *inter alia*:
 - i. educating parents about children's needs and the effect of parental conflict on them;
 - ii. educating the parents to work together and to cooperate with one another to reach decisions between themselves regarding their children;
 - iii. implementing parenting plans or court orders; and
 - iv. resolving conflicts regarding the children and/or arising from the parenting plan or court order in a timely manner.
- f. A PC is generally appointed by the court for those high conflict parents who have demonstrated an inability or unwillingness to make parenting decisions on their own, comply with parenting agreements and orders, reduce child-related conflicts, and protect their children from the impact of that conflict.

- g. When the PC is appointed by a court order, the PC can proceed with the parenting coordination in the best interests of the child, which may include the issuing of directives, even in circumstances where one of the parties refuses to consult with the PC.
- h. A PC may also be appointed by agreement between the parties to issue directives which are binding on the parties only in the event that the parties cannot reach agreement.
- i. The delegation of decision-making authority is a serious issue and only qualified professionals should be appointed to this role.
- j. A PC may be requested by the court to provide a written or oral report to the court.
- k. The parenting coordination process is child-focused and practiced by experienced mental health and/or legal professionals, with specialised training and experience in conflict management, working with high conflict personalities, facilitating child participation, mediation and the issuing of directives.
- l. A PC must routinely screen prospective matters for domestic violence and decline to accept such matters if they do not have specialised training and expertise to effectively manage matters involving violence, power imbalance, and patterns of control and coercion.
- m. The Guidelines provide detailed guidance for PCs concerning:
 - i. minimum qualifications;
 - ii. ethical obligations and conduct; and
 - iii. practice and procedure.
- n. The Guidelines refer to different levels of guidance as follows:
 - i. the term "may" in the Guideline is the lowest strength of guidance and indicates a practice that the PC should consider adopting, but from which the PC can deviate in the exercise of good professional judgment;
 - ii. the term "should" indicates that the practice described in the Guideline is highly recommended and should only be departed from in exceptional or compelling circumstances; and

- iii. the term "must" in the Guideline denotes the highest level of direction, indicating that the described practice is mandatory.
- o. There are thirteen best practice Guidelines, including statements of underlying principles, to assist PCs in identifying how best to conduct themselves and their practices in the discharge of their appointed duties in compliance with the governing legislation, orders of the court, an agreement between the parties to appoint a PC, and/or a PC agreement.

1. GUIDELINE I – QUALIFICATIONS

- 1.1 A PC must be qualified by education, training and experience to undertake parenting coordination with the skill and capacity required to deal appropriately and efficiently with high conflict parenting issues in the best interests of the children.
- 1.2 Any person seeking to serve as a PC must at a minimum:-
 - 1.2.1 have a mental health or legal professional qualification (NQF level 7 or higher); and
 - 1.2.2 be a NABFAM accredited family mediator;
 - 1.2.3 have specific training in the parenting coordination process, which includes knowledge of family dynamics in separation and divorce, facilitating child participation and domestic violence screening; and
 - 1.2.4 have seven years professional experience in family dispute resolution; and
 - 1.2.5 be a member of a designated professional organisation, such as the Health Professions Council of South Africa (“HPCSA”), the South African Council for Social Service Professions (“SACSSP”), the Law Society of South Africa (“LSSA”) or the General Bar Council of South Africa; or
 - 1.2.6 have served for a period of seven years on the bench as a judge or magistrate; and
 - 1.2.7 have a certificate of good standing with NABFAM and the designated professional body; or,
 - 1.2.8 be a person deemed to be suitably qualified by the Court.
- 1.3 A PC should participate in peer consultation and/or mentoring to receive feedback and support in respect of ongoing matters. PC agreements should specify that such professional consultation is permitted (see Guideline V).
- 1.4 A PC must maintain professional competence in parenting coordination

and should regularly participate in continuing educational activities promoting professional growth as a PC. The PC should keep a portfolio of evidence of such activities (e.g. peer consultations, reading, discussion sessions, training sessions, seminars, conferences and workshops.)

1.5 A PC must decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the PC's skill or expertise.

1.6 A PC seeking to be accepted by the Parenting Coordination Division of a NABFAM member organisation such as SAAM, FAMAC or KAFAM must:

1.6.1 be of character satisfactory to such member organisation; and

1.6.2 meet the requirements set out by such member organisation, from time to time.

2. GUIDELINE II – SCOPE OF PARENTING COORDINATOR'S AUTHORITY AND RESPONSIBILITY

2.1 A PC may only serve by:

2.1.1 agreement between the parties in writing; and/or

2.1.2 an order of court; which

2.1.3 provides the PC with the requisite authority to work with the parties outside of the adversarial process, obtain information, make recommendations and issue directives as to the matters specified in the agreement or court order.

2.2 A court order or written agreement between the parties must clearly and specifically define the PC's scope of authority and responsibilities.

2.3 The court order and/or the agreement between the parties to appoint a PC should specify a term of appointment for the PC, including starting and ending dates, renewal terms, and termination conditions.

2.4 In addition to any agreement between the parties or court order providing for the appointment of a PC, a written PC agreement between the parties and the PC must be entered into which agreement shall detail specific issues not contained in the agreement between the parties and/or the court order, such as procedures to be followed, fees, services and billing practices.

2.5 With regard to the selection of a PC, the parties should have the option

of appointing a PC by agreement; however, if they cannot reach an agreement on the choice of a PC, the court may select a PC for the parties or may nominate the Chairperson of an appropriate organisation to select a PC.

2.6 Issuing of Directives:

2.6.1 A PC must

2.6.1.1 be empowered to and issue directives to the extent permitted by the appointing court order or agreement between the parties to appoint a PC;

2.6.1.2 be knowledgeable about the applicable law;

2.6.1.3 be knowledgeable about the procedure for the issuing of directives; and

2.6.1.4 deliver such directives to the parties in a timely manner by email, Facetime, fax, Skype, telephone, or in person. In the event that a directive is provided orally, a written version, including reasons, must follow in a timely manner.

2.6.2 A PC must not

2.6.2.1 issue directives outside the scope of the PC's authority;

2.6.2.2 issue directives that would change legal guardianship or primary residence or completely suspend contact with a parent; and

2.6.2.3 offer legal or psychological advice.

2.7 In circumstances where a PC is not permitted to issue a directive as provided for in paragraph 2.6, the PC may make a recommendation to the parents and/or the court in respect of such issue. This should be in keeping with the Role and Function of the PC as outlined in Guideline IX.

3. GUIDELINE III – CO-PARENTING COORDINATION

3.1 A PC team consisting of more than one PC (usually from different disciplines) may be appointed, referred to as co-parenting coordinators ("Co-PCs").

3.2 The Co-PCs must develop a workable system for the following:

3.2.1 The management of the division of responsibilities.

3.2.2 Decision making procedures which must be set out clearly with regard to which decisions may be made separately and

- which decisions must be made jointly.
- 3.2.3 Responding to correspondence from the parties.
 - 3.2.4 Costs for services provided individually by each PC.
 - 3.2.5 Costs for services provided jointly by the PCs.
 - 3.2.6 Costs for joint meetings between the PCs.

4. GUIDELINE IV - INFORMED CONSENT

4.1 A PC must at the outset of the process:-

- 4.1.1 review with the parties the nature of the PC's role and parameters of appointment specifically in relation to the issuing of directives;
- 4.1.2 be satisfied that the parties understand the nature of the process, including, *inter alia*:-
 - i the extent of the authority assigned to the PC;
 - ii that the PC's authority to act ends after two years as well as the procedures for reappointment and termination of the PC (see Guideline XII);
 - iii the limited nature of the confidentiality of the process (see Guideline VI);
 - iv that the PC is obliged from time to time to obtain the participation of the child/ren;
 - v that the PC will be authorised to consult with and obtain information from third parties;
 - vi that the PC may appoint other professionals;
 - vii that permission is required to be given for the PC to discuss the matter for consultation purposes with another professional;
 - viii the extent of the parties' financial responsibilities in respect of the PC process;
 - ix the parties' rights to approach the court; and
 - x the fact that both parties and the PC are required to sign a PC agreement at the outset of the process in order to initiate the process.

5. GUIDELINE V - IMPARTIALITY

5.1 A PC must maintain impartiality in the process of parenting coordination. In this Guideline, "impartiality" denotes:-

- 5.1.1 freedom from favouritism or bias in word, action, or appearance, and includes a commitment to assisting all parties, as opposed to any one individual; and

- 5.1.2 does not mean that a PC must be neutral regarding particular conduct or a particular directive.
- 5.2 A PC must withdraw if the PC determines that he or she cannot act in an impartial or objective manner.
- 5.3 A PC must neither give nor accept a gift, favour, loan or other item of value to or from any party having an interest in the parenting coordination process. During the term of the PC's appointment, a PC must not solicit or otherwise attempt to procure future benefits, services or positions from which the PC may profit.
- 5.4 A PC must not coerce or improperly influence any party to make a decision.
- 5.5 A PC must not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance material to the parenting coordination process.
- 5.6 A PC must not accept any engagement, provide any service, or perform any act outside the role of PC that would compromise the PC's integrity or impartiality in the parenting coordination process.

6. GUIDELINE VI – CONFIDENTIALITY, TRANSPARENCY AND DUE PROCESS

- 6.1 Parenting coordination is not a confidential process for communications between:
 - 6.1.1 the parties, their children and the PC;
 - 6.1.2 the PC and other relevant parties to the parenting coordination process; or
 - 6.1.3 the PC and the court.
- 6.2 Subject to:
 - 6.2.1 the legal limitations on confidentiality;
 - 6.2.2 permitted professional purposes (as referred to in Guideline 4.1.2 (vii) above); and
 - 6.2.3 the express provisions of the authorising court order or agreement,a PC must maintain confidentiality and information obtained must not be shared outside of the parenting coordination process.
- 6.3 A PC must inform the parties of the limitations on confidentiality as provided for in this Guideline and, in particular, that:

- 6.3.1 suspected child abuse or neglect must be reported to the relevant authorities in accordance with section 110 of the Children's Act;
 - 6.3.2 the PC must report to law enforcement or other authorities if the PC has reason to believe that any family member appears to pose a serious risk of harm to self or others.
- 6.4 The PC must use a methodology that is fair and transparent to both parties and the court. Each party must be given an opportunity to be heard in the process. Notice must be given as to what is expected from the participation of the parties and the consequences of non-participation. If one party refuses to cooperate after notice, the PC may continue to resolve the dispute or withdraw from the process in accordance with the governing court order and/or the agreement between the parties to appoint a PC and the PC agreement.
- 6.5 In the event that a PC communicates with a third party in the course of the parenting coordination process, the PC should notify any such third party that information obtained from them is not confidential and that it may be made available to the parties if in the best interests of the children, and/or be used in the issuing of directives, the writing of reports, the making of recommendations or when testifying in court.

7. GUIDELINE VII – CONFLICTS OF INTEREST

- 7.1 A PC must not serve or continue to serve in a matter in which there is a conflict of interest, including situations in which the impartiality of the PC is compromised or appears to be compromised, where the PC has been involved in the matter previously in a different capacity, or where the PC has personal knowledge of the parties or the matter.
- 7.2 During the term of a parenting coordination appointment, a PC must not create a conflict of interest by providing any services to interested parties that are not directly related to the parenting coordination process.
- 7.3 A PC must disclose potential conflicts of interest as soon as the PC becomes aware of any interest or relationship giving rise to the potential conflict.
- 7.4 After appropriate disclosure of potential conflicts of interests, the PC may serve, or continue to serve, with the written agreement of all parties. However, if the conflict of interest clearly impairs a PC's impartiality, the PC must withdraw regardless of the express agreement

of the parties.

- 7.5 A PC may make referrals to other professionals to work with the family, but must avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, benefits or similar remuneration must be received or given by a PC for referrals.

8. GUIDELINE VIII – SEQUENTIAL OR MULTIPLE ROLES

- 8.1 A PC must not serve in sequential or multiple roles in a case that creates a professional conflict, including:
- 8.1.1 a party's legal representative or a child's legal representative must not be appointed as a PC in the same case;
 - 8.1.2 a PC must not be appointed as the lawyer for one party or a child either during or after the term of the PC's appointment with the family; and
 - 8.1.3 a PC must not become a therapist, evaluator, consultant, coach, or other mental health care provider to a party or a child, either during or after the term of the PC's appointment with the family.
- 8.2 Notwithstanding the provisions in 8.1 above, it must be understood that the role of a PC includes *inter alia*:
- 8.2.1 facilitation of issues by agreement between the parties *inter alia* through mediation, education and negotiation (although the PC does not act in a traditional mediation role);
 - 8.2.2 dispute resolution which, depending on the terms of the PC agreement may necessitate the PC issuing a directive.

9. GUIDELINE IX – ROLE & FUNCTIONS OF THE PARENTING COORDINATOR

- 9.1 A PC must assist the parties in promoting the best interests of the children and reducing conflict between the parties consistent with the role and functions of a PC as set out in these Guidelines.
- 9.2 Assessment Function: a PC
- 9.2.1 must be alert to any reasonable suspicion of domestic violence directed at anyone, particularly the children. The PC must act in accordance with any protection order in place and use his or her best endeavours to ensure the safety of all participants in the parenting coordination process. The PC must be alert to any reasonable suspicion of:

- i substance abuse by a parent or child;
 - ii any cognitive, psychological or psychiatric impairment of a parent or child;
 - iii neurological difficulties of a parent or child;
 - iv high conflict personality dynamics; and
 - v child abuse and/or neglect, physically or otherwise;
- 9.2.2 should have initial individual and/or joint interviews with the parties;
- 9.2.3 may interview individuals who provide services to the children, to assist with the assessment of the children's needs and wishes;
- 9.2.4 may communicate by way of joint or individual meetings, telephone conferences, e-mail, text messages, Skype or any appropriate virtual platform;
- 9.2.5 should determine whether separate or joint sessions are most appropriate at any particular time;
- 9.2.6 may make referrals to allied professionals or services;
- 9.2.7 must have the authority to meet and/or consult with all relevant persons including, but not limited to,
- i the legal representatives for all parties;
 - ii a legal representative appointed for any of the children;
 - ii any person acting in a parental role for the children;
 - iii the children;⁹
 - iv any professional who has compiled a professional report;
 - v school officials;
 - vi physical, medical and mental health care providers;
 - vii extended and/or blended family members; and
 - viii anyone else whom the PC determines to have a significant role in contributing to or resolving the conflict;
- 9.2.8 must have access to and review all documentary information necessary to assess the inter-personal dynamics and issues raised by the parties and their children, including:
- i all parenting capacity reports;
 - ii relevant court documents and orders;
 - iii affidavits;
 - iv records from related proceedings, including but not limited to assault, domestic violence or child protection cases;
 - v relevant health, mental health, psychological testing, counselling and educational records; and
 - vi any other relevant records.

⁹ In accordance with sections 10 & 31 of the Children's Act and regulation 11(1) to the Act.

9.3 Conflict Management Function: a PC

- 9.3.1 should encourage and assist parties to resolve disagreements and minimise conflict;
- 9.3.2 should address exchanges among family members to assist in improving communication and reducing conflict, and suggest more productive forms of communication that may limit conflict;
- 9.3.3 should in cases of domestic violence or patterns of coercive control, employ techniques to minimise or eliminate the risk of opportunity for further violence and coercion;
- 9.3.4 should, in cases of domestic violence or patterns of control and coercion, hold individual sessions with the parties to convey the information required by Guidelines.

9.4 Dispute Resolution Function: in keeping with the authority and responsibilities as outlined in Guideline II a PC

- 9.4.1 should facilitate agreement between the parties on all disputes regarding their children, having regard to the nature and urgency (if any) of the dispute;
- 9.4.2 should employ dispute resolution skills, including negotiation, mediation and, when necessary, the issuing of directives to assist in resolving disputes;
- 9.4.3 must facilitate child participation in all disputes concerning the child in accordance with the provisions of the Children's Act;
- 9.4.4 must only address disputes that are within the authority of the PC by the authorising court order and/or agreement between the parties to appoint a PC. A PC may have authority to resolve, *inter alia*, the following types of disputes:
 - i changes or clarification of parenting time/contact schedules or conditions including vacations, allocation of holidays and temporary variations of the existing parenting plan in accordance with the developmental and circumstantial needs of the children and/or a material change in either parent's circumstances;
 - ii transitions/exchanges of the children including date, time, place, means of transportation and transporter;
 - iii health care management including, *inter alia*, medical, dental, orthodontic, and vision care;
 - iv child-rearing issues;
 - v psychotherapy or other mental health care including counselling for the children;
 - vi psychological testing or other assessment of the children and parents;

- vii education or day-care, including school choice, tutoring, participation in education— related assessments and programs, or other major educational decisions;
- viii enrichment and extracurricular activities including camps and jobs;
- ix religious observances and education;
- x children’s travel and passport arrangements where permission to travel abroad has been agreed upon between the parties or granted by an order of court;
- xi clothing, equipment, personal possessions of the children;
- xii communication between the parents and the children including telephone, fax, e-mail, notes in backpacks, etc.;
- xiii communication by a parent with the children including telephone, cell phone or any virtual communication platform and e-mail when they are not in that parent’s care;
- xiv alteration of appearance of the children including hair-cuts, tattoos, ear and body piercing;
- xv role of, and contact with significant others and extended family members;
- xvi substance abuse assessment or testing for either or both parents or a child, including access to results; and
- xvii parenting education for either or both parents.

9.6 Educational Function: a PC may inform or educate the parties about

- 9.6.1 child development;
- 9.6.2 parenting skills;
- 9.6.3 the impact of conflict on children;
- 9.6.4 communication skills;
- 9.6.5 strategies for communication and conflict management with the child;
- 9.6.6 dispute resolution skills; and
- 9.6.7 when appropriate, any relevant research.

10 GUIDELINE X – COMMUNICATIONS AND RECORD-KEEPING

10.1 Since parenting coordination is a non-adversarial process designed to reduce conflict and help settle disputes efficiently in the best interest of children, a PC must communicate with all parties, children, legal representatives, colleagues and the court in a manner which preserves the integrity of the parenting coordination process and considers the

safety of all participants.

10.2 In communicating with the participants in the parenting coordination process, a PC:

- 10.2.1 must communicate in an objective, balanced manner that takes into consideration any possibility of a perception of bias;
- 10.2.2 must determine and communicate a standardised protocol for the resolution of specific disputes as and when such disputes arise;
- 10.2.3 may initiate or receive oral or written communications with the parties, their children, legal representatives of the parties or the children, and all other parties relevant to understanding the issues;
- 10.2.4 may engage in individual communications with the parties, their children and/or their legal representatives;
- 10.2.5 as far as possible should communicate agreements, recommendations and directives to all parties at the same time;
- 10.2.6 must not communicate with the court without the knowledge of all parties to the PC agreement.

10.3 A PC must maintain reasonable practice records in a manner that is professional, comprehensive and inclusive of information and documents that relate to the parenting coordination process and that support the recommendations and directives made by the PC.

10.4 Specifically, in this regard a PC must:

- 10.4.1 keep sufficient notes regarding communications with all participants in the parenting coordination process;
- 10.4.2 document in writing all agreements made by the parties and/or directives issued by the PC;
- 10.4.3 follow the court's directions regarding provision to the court of a copy of any directives made by the PC;
- 10.4.4 follow the court's directions regarding provision to the court of any report or recommendations made by the PC.

10.5 Where the services of a PC are terminated and a new PC is appointed, the new PC must request the relevant records and documents as set out in 10.4 above from the previous PC.

11 GUIDELINE XI – PRACTICE

11.1 A PC must not engage in marketing activities that contain false or misleading information. A PC must ensure that all marketing material

used in relation to his or her practice and experience regarding

11.1.1 his or her qualifications and experience;

11.1.2 the services to be rendered; and

11.1.3 the parenting coordination process;

are accurate, verifiable and not misleading. A PC must not make claims of achieving specific outcomes, implying favouritism or creating an unjustified expectation about the parenting coordination process.

11.2 Parenting coordination services should be accessible to all parents, irrespective of their financial resources. In an endeavour to provide parenting coordination services to all, PCs are encouraged to provide services *pro bono* or at reduced rates, to deserving parents at the PC's sole discretion.

11.3 A PC who is a member of a NABFAM member organisation or any equivalent national accreditation agency must:

11.3.1 respond promptly and completely to any communication from such organisation;

11.3.2 cooperate with such organisation in addressing concerns or complaints from the public; and

11.3.3 otherwise comply with the organisations' policies, practice and procedural requirements.

12 GUIDELINE XII – BILLING

12.1 Prior to the commencement of a parenting coordination appointment, a PC must explain to the parties the basis upon which all fees are charged, including fees for disbursements, taxes, costs, retainers and deposits, payment methods and any penalties for postponement, cancellation and/or nonappearance, as well as any other financial terms applicable, all of which must be confirmed in writing. The fees charged for parenting coordination services must be based on the actual time expended by the PC.

12.2 The PC should comply with any practice rules regarding fees. Activities for which a PC may charge include, but are not limited to:

12.2.1 time spent consulting with parents, children and collateral sources of information;

12.2.2 preparation of agreements; correspondence, decisions and reports;

12.2.3 review of records and correspondence;

12.2.4 telephone and electronic communication;

12.2.5 meetings; and

12.2.6 travel costs, travelling time and, if applicable, accommodation.

- 12.3 A PC must maintain records necessary to support charges for services and expenses and should make detailed and specified accounting of those charges to the parties.
- 12.4 A PC may request a retainer and/or deposit prior to starting a case. The parties should be billed on a regular basis and notified when the retainer and/or deposit is to be replenished.
- 12.5 All fees and costs must be appropriately divided between the parties as directed by the court order of appointment or as agreed in the agreement to appoint a PC and/or the PC agreement.
- 12.6 A PC must not refrain from taking action or issuing a directive in terms of the court order of appointment or as agreed in the agreement to appoint a PC and/or the PC agreement, which is in *the best interest of the children*, due to the fact that there are outstanding fees.
- 12.7 In the event that either one, or both, parties has not maintained the required retainer, or has an outstanding balance on their account with the PC, the PC may:
- 12.7.1 give the defaulter the opportunity to remedy the situation within 10 (ten) days.
 - 12.7.2 Should the defaulter fail to remedy the situation within 10 (ten) days the PC may exercise the option to suspend services temporarily and inform the parties thereof.
 - 12.7.3 If necessary the PC may inform the parties legal representatives and any other relevant stakeholders.

13 GUIDELINE XIII – DURATION AND TERMINATION OF THE PARENTING COORDINATION PROCESS

- 13.1 A PC's authority to act ends in accordance with the provisions of the court order, alternatively in accordance with the terms of the PC agreement. It is recommended that a PC is appointed for a period of two years.
- 13.2 Notwithstanding the provision in 13.1, a PC's appointment may be extended by a further parenting coordination agreement or order, for a period not exceeding 2 years.
- 13.3 Notwithstanding the provision in 13.1, a PC's appointment may be terminated at any time as follows:
- 13.3.1 by agreement between the parties;

- 13.3.2 by an order made on application by either of the parties;
- 13.3.3 unilaterally by the PC in writing, on notice to the parties or with immediate effect at the sole discretion of the PC.

13.4 Upon termination the PC must refer the parties to other suitably qualified professionals who can assume the role and responsibilities of a PC for the parties, alternatively to the relevant NABFAM member organisation, such as FAMAC, KAFAM or SAAM.

TEMPLATES

1. TEMPLATE FOR PC AGREEMENT

DRAFT PARENTING COORDINATION AGREEMENT

ENTERED INTO BY AND BETWEEN

..... (THE PARENTS)

AND

..... (THE PC)

- 1 THE APPOINTMENT OF THE PARENTING COORDINATOR (PC)
 - 1.1 [Insert PC's name] is appointed as PC by consent order of the court or by mutual agreement.
 - 1.2 This agreement governs the working relationship between the parents and the PC
 - 1.3 The parents acknowledge and agree that [insert PCs name] has the requisite professional qualifications and professional skills to provide the services of PC. The parties have taken note of the PC's CV and acknowledge that the PC is suitably qualified.
 - 1.4 The parties acknowledge and agree that the PC is functioning in a specific role as a PC and not as a mental health or legal practitioner for either parent, the family or the child(ren). Any comments or suggestions made by the PC while fulfilling her/his responsibilities under this contract shall not be construed as counselling, therapeutic or legal advice.
 - 1.5 Subject to this agreement or further court order, the PC is appointed for a term ofmonths after the date that all parties sign this agreement.
 - 1.6 All of the parties by mutual agreement in writing at least 2 months before expiry date of the PC's term may renew the PC's appointment. The PC may choose not to renew such appointment at the PC's sole discretion.
 - 1.7 Neither parent may unilaterally terminate the PC Agreement. Both parents may jointly terminate this Agreement in writing at any time.
 - 1.8 The PC may resign any time s/he determines the resignation to be in the best interests of the child/ren, or if the PC is unable to serve out his/ her term. The PC need not provide reasons for his/her resignation.
 - 1.9 Any rulings made shall continue in full force and effect until amended by either a replacement PC or the court.

- 2 ROLE AND FUNCTIONS OF THE PARENTING COORDINATOR
- 2.1 The PC will assist the parents to resolve parenting issues emphasizing and promoting the best interests of the children and minimizing parental conflict.
- 2.2 The PC's function includes both a consensus building and decision making components. The PC's role includes mediation, education and negotiation (although the PC does not act in a traditional mediation role) and dispute resolution. Depending on the terms of the PC agreement, the responsibilities may necessitate the PC issuing a directive. The parents acknowledge that, unlike the process of mediation in other contexts, they are unable to withdraw from the process of Parenting Coordination.
- 2.3 To carry out this role, the PC may at his/her discretion:
- 2.3.1 meet with the parents jointly or individually, and/or with their children when the PC decides it is appropriate, with the timing, frequency and duration of meetings determined by the PC;
- 2.3.2 educate the parents about communication with each other and with their child/ren;
- 2.3.3 refer the parents to appropriate resources about parenting, communication techniques, dispute resolution or personal coaching, therapy or other related services;
- 2.3.4 consult with third parties, including other parenting coordinators, counsellors, mental health professionals and independent legal counsel;
- 2.3.5 attempt to resolve a dispute; and,
- 2.3.6 if agreement cannot be reached on that dispute, resolve the issue by way of issuing a directive, binding on the parents.
- 2.4 Where the PC issues a directive, it is effective on the date that the directive is issued or on a later date specified by the PC.
- 2.5 The PC should assist the parties consistent with the role and functions of the PC as set out in the Court Order.
- 2.6 Assessment Function: The PC
- 2.6.1 must be alert to any reasonable suspicion of domestic violence directed at anyone, particularly the children. The PC will act in accordance with any protection order in place and take necessary measures to ensure the safety of all participants in the parenting coordination process, including the PC. The parents acknowledge that they must alert the PC to any reasonable suspicion of:

- i. substance abuse by a parent or child and to any cognitive, psychological or psychiatric impairment of a parent or child;
 - ii. neurological difficulties of a parent or child;
 - iii. high conflict personality dynamics;
 - iv. child abuse and/or neglect, physically or otherwise;
- 2.6.2 may communicate by way of joint or separate in-person meetings, telephone conferences, e-mail, or any other form of electronic communication at the sole discretion of the PC;
- 2.6.3 will determine at the PC's discretion whether separate or joint sessions are most appropriate at any particular time, having regard to the safety of the participants if the case involves domestic violence and/or patterns of coercive control;
- 2.6.4 has the authority to meet and/or consult with any person the PC deems relevant.
- 2.6.5 must have access to all documentary information necessary to fulfil the PC's responsibilities, which the parents are responsible to provide.
- 2.7 Dispute Resolution Function: The PC
 - 2.7.1 must attempt to facilitate agreement between the parties on all disputes regarding their children having regard to the nature and urgency (if any) of the dispute;
 - 2.7.2 must facilitate child participation in all disputes concerning the child in accordance with the provisions of the Children's Act.
 - 2.7.3 will only address disputes that are within the authority granted to the PC by the authorising court order and/or agreement between the parties to appoint a PC.
 - 2.7.4 will only issue directives as specifically directed in the authorising court order and/or agreement between the parties to appoint a PC when the parents are unable to reach agreement.
- 2.8 Directive-making Function: the PC
 - 2.8.1 may issue directives to the extent permitted by the appointing court order or agreement between the parties to appoint a PC; and
 - 2.8.2 may be requested by the parties and/ or court to make recommendations or provide reports to the court.
 - 2.8.3 may decide to issue a report.

2.8.4 The PC shall determine the format in which directives will be delivered.

3 TERMS AND AGREEMENT TO COOPERATE

During the term of the PC Agreement, the parents undertake not to initiate or renew court proceedings on matters that are within the scope of the PC's services as defined by this Agreement, without notifying the PC.

4 CONFIDENTIALITY & TRANSPARENCY

The parties acknowledge that:-

4.1 Parenting coordination is not a confidential process for communications among

4.1.1 the parties, their children and the PC;

4.1.2 the PC and other parties relevant to the parenting coordination process; or

4.1.3 the PC and the court

4.2 Subject to:

4.2.1 the legal limitations on confidentiality

4.2.2 permitted professional purposes; and

4.2.3 the express provisions of the authorising court order or agreement.

The PC must maintain confidentiality and information obtained must not be shared outside of the parenting coordination process.

4.3 The parties acknowledge the limitations on confidentiality in particular that:

4.3.1 suspected child abuse or neglect must be reported to the relevant authorities in accordance with section 110 of the Children's Act;

4.3.2 the PC must report to law enforcement or other authorities if the PC has reason to believe that any family member appears to pose a serious risk of harm to self or others.

4.4 The PC will use a methodology that is fair and transparent to both parties and the court. Each party must be given an opportunity to be heard in the process. If one party refuses to cooperate after notice, the PC may continue to resolve the dispute or withdraw from the process in accordance with the governing court order, the agreement between the parties to appoint a PC and/or the PC Agreement.

5 EXPERT EVIDENCE

5.1 The PC has the authority to determine the necessity of

retaining professional(s) to provide expert opinions with respect to respecting any outstanding issues(s) and to direct the parents accordingly.

- 5.2 If a directive has to be issued and issues of law arise, in the PC's sole discretion, the PC is authorized to obtain independent legal advice to assist the PC in the determination of those issues. The parents shall have access to any representations or opinions provided by such counsel. The cost of such counsel shall initially be borne by the parents equally, subject to reapportionment by the PC.

6 BILLING

- 6.1 Prior to the commencement of a parenting coordination appointment, a PC must explain to the parties, the basis upon which all fees are charged, including fees for disbursements, taxes, costs, retainers, deposits, payment methods and any penalties for postponement, cancellation and/or nonappearance, as well as any other financial terms applicable. The fees charged for parenting coordination services shall be based on the actual time expended by the PC.
- 6.2 Activities for which a PC may charge include, without limiting the generality thereof:
- 6.2.1 time spent interviewing parents, children and collateral sources of information;
 - 6.2.2 preparation of agreements; correspondence, decisions and reports;
 - 6.2.3 review of records and correspondence;
 - 6.2.4 telephonic and electronic communication;
 - 6.2.5 meetings; and
 - 6.2.6 cost, time and, if applicable accommodation when the PC is required to travel
- 6.3 The PC will maintain records necessary to support charges for services and expenses and should make a detailed accounting of those charges to the parties.
- 6.4 The PC will request a retainer and/or deposit of R prior to starting a case. The parties should be billed on a regular basis and notified when the retainer and/or deposit is to be replenished.
- 6.5 All fees and costs will be appropriately divided between the parties as directed by the court order of appointment or as agreed in the PC Agreement with the parties. In terms of this order/agreement..... [insert].....
- 6.6 Annual increase shall be applied to the fee structure agreed upon at the time of signing the PC Agreement. The parties

will be notified of the quantum of the increase 30 days before the annual increase is applicable.

7 TERMINATION

7.1 The PC's authority to act ends in accordance with the provisions of the court order, which states Alternatively, in accordance with the terms of the PC agreement, the PC's authority to act ends

7.2 The PC's appointment may be extended by a further parenting coordination agreement or order, for a period not exceeding 2 years.

7.3 Notwithstanding the provision in 7.1 the PC's appointment may be terminated at any time as follows:

7.3.1 by agreement between the parties;

7.3.2 by an order made on application by either of the parties;

7.3.3 unilaterally by the PC in writing, on notice to the parties or with immediate effect at the sole discretion of the PC.

7.4 Upon termination, the PC will refer the parties to other suitably qualified professionals who can assume the role and responsibilities of a PC for the parties.

8 RECORDING OF SESSIONS AND INTERACTION

Under no circumstances will the recording in any form of any consultation, session or any interaction between the PC and/or the parties be tolerated unless previously agreed to in writing.

9 GRIEVANCES

9.1 Should either/or both of the parties hold any grievance regarding the PC and his/her performance and/or any directives issued by the PC, the party/ies must consult with the PC regarding this grievance.

9.2 Only upon the failure to resolve the grievance shall the party/ies proceed to terminating the authority of the PC.

Signed _____
Name _____

Date _____

Signed _____
Name _____

Date _____

Parent Coordinator

Signed _____
Name _____

Date _____

2. TEMPLATE FOR A PARENTING COORDINATION SUMMARY AND DIRECTIVE

For attention: Mother, via e-mail: xxxxxxxx@xxxxxxx.co.za
Father, via e-mail: xxxxxxxx@xxxxxxx.com

cc: where relevant

1. Introduction: Parenting coordination requested byx..... in terms of paragraph of the Parenting Plan, Annexure “A” of the Court Order issued in the X Court ondate..... under Case No.: (hereafter referred to as “the order”).

(in the first summary, record that both parents have signed the PC agreement).

2. Current dispute: brief description
3. List relevant documents other than the order: e.g. assessment reports, previous summaries, emails received from the parties where applicable.
4. List meetings, telephone consultations relevant to the summary: Ondate..... the PC met withx..... andy..... for x hours.
5. Background to the current dispute: provide a brief background and indicate whether the parents have/have not attempted to resolve the dispute prior to requesting parenting coordination.
6. Summary of the meeting(s), other consultations: list the salient points including agreements reached.
7. Directive(s):
Pre-amble: Having been unable to successfully mediate agreement betweenx..... andy.... and based on the information before me, the following directive is hereby issued deemed to be in the best interests ofchild.....
8. PC’s concerns: If there are concerns/observations made by the PC which do not fall under the previous headings, whether positive or negative, these can be listed here, e.g. an observation that parents seem to have reached agreement on most issues and are willing to compromise, an observation that parents

continue to operate at high levels of conflict despite the child's psychologist having reported that this has a negative effect on child.

Parent Coordinator

Date

withdraw as PC with immediate effect.

2. In terms of iv, the following templates serve as a guideline:

2.1 One party objects to the PC continuing:

If the court order makes provision for a grievance hearing, the PC should first have a grievance hearing with the party laying the grievance before deciding whether to resign or not. It is recommended that a grievance hearing should take place at no charge.

For attention:the parties.....
.....the registrar.....court.....(optional)
.....mediation organisation.....
.....attorneys.....(if applicable)

..... has been appointed as parenting coordinator in the matter of and in terms of a court order issued in the high court/regional court ondate..... under case number

Inparty's..... email of ...date.....,party.... made several statements and allegations regarding my role and performance as PC. To the extent that ...party..... suggests that I have not fulfilled my role as PC in a proper manner, I wish to state for the record that I have at all times conducted the parenting coordination fairly, professionally, with due care and consideration for both parties and with the child/children's best interests being paramount.

I wish to state further that I will not deal with each and every statement and allegation at this stage. This is not to be taken as an admission that they are correct and I reserve the right to deal with them at a later stage should this be necessary.

Having reviewed the parenting coordination process thus far and having attempted to addressparty's..... concerns by holding a grievance hearing in terms of para x of the court order referred to above ondate....., I have come to the conclusion that I cannot assist further and as such it is appropriate for me to resign as PC in this matter. My resignation is effective immediately.

2.2. Where one party/both parties do not co-operate/adhere to directives:

For attention:the parties.....
.....the registrar.....court.....(optional)
.....mediation organisation.....
.....attorneys.....(if applicable)

..... has been appointed as parenting coordinator in the matter of and in terms of a court order issued in the high court/regional court ondate..... under case number

Having reviewed the directives issued since my appointment in ...year....., it is clear to me that my directives have not been followed in a manner which I would have anticipated of parties committed to the parenting coordination process. As such it is appropriate for me to resign as PC in this matter. My resignation is effective immediately.

2.3. Lack of payment:

For attention:the parties.....
.....the registrar.....court.....(optional)
.....mediation organisation.....
.....attorneys.....(if applicable)

..... has been appointed as parenting coordinator in the matter of and in terms of a court order issued in the high court/regional court ondate..... under case number

Despite ongoing requests for payment, I have not received payment for the services rendered as PC in this matter. I have come to the conclusion that I cannot continue to assist further in these circumstances and as such it is appropriate for me to resign as PC in this matter. My resignation is effective immediately.

2.4 In terms of v, the following is recommended:

This usually occurs where there is evidence of domestic violence or severe personality disorders which render the parenting coordination process inappropriate as a result of power imbalances which adversely affect the safety of a party and/or the ability of a party to negotiate a fair agreement and are therefore more appropriately referred back to court.

For attention:the parties.....

.....the registrar.....court.....(optional)
.....mediation organisation.....
.....attorneys.....(if applicable)

..... has been appointed as parenting coordinator in the matter of and in terms of a court order issued in the high court/regional court ondate..... under case number

Having reviewed my involvement in this matter since my appointment in ...year....., I have come to the conclusion that parenting coordination is not an appropriate way to deal with your disputes and that following the legal process through the courts is the correct route to follow going forward. As such it is appropriate for me to resign as PC in this matter. My resignation is effective immediately.

Parent Coordinator

Date