Dauphin County Bar Association

Handout

Mediation, Arbitration, Parenting Coordination & Collaborative Law - What's Best? MAP your course!

Hon. Jeannine Turgeon
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&
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OPTIMAL™
DISPUTE RESOLUTIONS

Hon. Jeannine Turgeon (Ret.)

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Experience

Hon. Jeannine Turgeon (Ret.) is a Mediator/Arbitrator with Optimal Dispute Resolutions with a unique focus on resolving family law and other civil matters. Judge Turgeon served for more than 28 years as a judge for the Dauphin County Court of Common Pleas where she authored more than 1,000 opinions and handled jury and nonjury trials in criminal, juvenile, civil (business disputes, real estate, contract disputes, malpractice) and other complex litigation issues as well as orphans court. She is well known throughout the Commonwealth for her expertise in divorce, custody and support matters. She takes a holistic approach to achieve mutually agreeable resolutions involved in these high-conflict and sensitive matters. Judge Turgeon seeks to utilize her experience to assist individuals and businesses to resolve their disputes outside the courtroom as a skilled mediator and arbitrator.

Throughout her career, she has worked to improve courts' family law systems including:

- Chairperson of the Family Law Section of the Pennsylvania Conference of State Trial Judges
- Chairperson of the Pennsylvania Supreme Court Domestic Relations Rules Committee which is tasked with drafting statewide rules and advises the Pennsylvania Supreme Court on matters related to divorce, child support, custody, paternity, protection from abuse and related issues
- Founding Member of Pennsylvania's Joint State Task Force on Parenting Coordination where she drafted statewide rules and standard parenting coordination agreements and orders for high-conflict custody cases
- Member of the Pennsylvania Attorney General's Family Violence Task Force, the Pennsylvania Coalition Against Domestic Violence (PCADV) Protection from Abuse Database Project Advisory Committee
- Produced first educational video on supervised visitation which explains role of non-professional or family member appointed to supervise visitations
- Administrator of Dauphin County Family Court Division

Judge Turgeon has devoted her professional life to providing justice for all including:

- Revising standard civil jury instructions into "plain English" as a member and Co-chair of the Pennsylvania Supreme Court Suggested Civil Jury Instruction Committee
- Significant role in revising Rules to permit jurors to take notes during trials
- Organizing "Meet Your Judges" events for citizens to learn about the court system and ask questions to judges

Judge Turgeon is passionate about diversity and inclusion and gained significant insights from her early career experience including:

- Intern for Hon. K. Leroy Irvis (Ret.), the first African American to serve as Speaker of the House in any state legislature in the U.S. since the reconstruction era
- Law Clerk to Hon. Genevieve Blatt (Ret.), the first female elected to statewide office in 1955 when she was elected Secretary of Internal Affairs and then appointed to the Commonwealth Court of Pennsylvania
- Secretary-clerk for former State Treasurer Grace M. Sloan, the first female State Treasurer in Pennsylvania
- Secretary for Hon. C. Delores Tucker (Ret.), former Director of Women's Division of Pennsylvania Democratic State Committee, the former Vice-Chair of the Democratic State Committee, the first female African-American cabinet officer in the U.S.; chair of the Democratic National Committee Black Caucus; the founding President of the Martin Luther King, Jr. Association for Non-Violent Change, the first African-American to serve as President of the National Federation of Democratic Women
- Member of the Joint Pennsylvania Trial Judges Task Force of Gender Fairness in Courts where she also served as chair for one term.

Professional Career

- Judge, Dauphin County Court of Common Pleas 12th Judicial District, 1992-2020
- Pennsylvania Bar Institute – educational presentations, 1981- to date
- Partner, Davis & Turgeon, 1986-1991
- Partner, Campbell, Spitzer, Davis & Turgeon, 1981-1985
- Associate, Nauman, Smith, Shissler & Hall, 1979-1981
- Adjunct Professor, Widener University School of Law

Education

- National Judicial College, University of Nevada
- University of Pittsburgh School of Law, J.D., 1977
- Chatham College, B.A., 1974

Recent Recognitions

- Exemplar Peace Keeping and Social Justice Award, IIPT Harrisburg Peace Promenade, 2018
- Dauphin County Bar Association's Women in the Profession DIVA Award, 2016
- Pennsylvania Bar Association Plain English Committee's Clarity Award, 2016
- Pennsylvania Psychological Association's Public Service Award, 2013
- The Patriot-News Editorial Board's "Sunshine Award", 2012
- Agape–Satyagraha Peace Maker Award, Certificate of Recognition for Promoting Peace and Conflict Resolution, 2011
- Dauphin County Commissioners' Certificate of Recognition for Do the Write Thing and Promoting No Violence and Cultural Awareness, 2010
- The Harrisburg Sesquicentennial Commission Living Legacy Series, Chosen as One of 150 Living Legacies, 2010
- Heinz-Menaker Senior Center's Lift Every Voice Award, 2010

Memberships

- Pennsylvania Bar Association Alternative Dispute Resolution Committee
- Pennsylvania Supreme Court Suggested Standard Civil Jury Instructions Committee
- Vice-Chair and member, 2004 – 2020
- Pennsylvania Bar Association Commission on Women in the Profession, 2019, 2020
- Pennsylvania State Trial Judges Conference: Judicial Security Committee, Executive Committee, 2008-2016; Chair, Family Law Section, 1996-2000
- William W. Lipsitt Inn of Court, Masters Member, 2011-2018
- Pennsylvania Sentencing Commission, 2003–2009
- Central Pennsylvania Judges and Lawyers Concerned for Lawyers and Judges, Co-Chair

Significant Opinions

- Commonwealth v. Miller, Joseph – double capital murder trial with subsequent issue on "mental retardation" and voiding death penalty, June 2003
- Rideout v. Hershey Medical Center – matter involving parents' right to removal of medical treatment, constitutional rights of privacy and liberty interests, December 1995
- Nardella v. Datillo – matter that involved a priest who engaged in a sexual relationship with a parishioner causing emotional injuries; permitted pre-complaint discovery, discovery of mental health records and clergy-communicant privilege issues, September 1996
- Tagouma v. Investigative Services – involved claims against a private investigator for intrusion upon seclusion, invasion of privacy and abuse of legal process, May 2009
- Rapp v. Rapp – divorce matter involving equitable distribution, overall distribution, alimony ($1.2M annual income), counsel fees and rental credit issues, 2014
- Jacob v. Shultz-Jacob – child support matter that involved a sperm-donor father, indispensable party, November 2006
- Durbin v. Durbin – divorce proceeding that involved equitable distribution, engagement ring as "marital property," valuation issues expense of assets sale, February 2005
- WTD v. TL f/k/a TD – proceeding involving the right of abusing spouse to obtain alimony pendente lite (APL), support guidelines, deviation and short duration of marriage, June 2017
- F.B. v. M.R. – child and spousal support involving income and earning capacity, validity of foreign divorce decree and U.S. immigration issues including affidavit of support, October 2013
- Myshin v. Myshin – spousal support case involving calculation of income, including voluntary retirement contributions, October 2012
- Wagner v. Wagner – child and spousal support that involved calculation of income, imputed income, retained earnings, perquisites (monthly net incomes of $137K, $159K and $118K), deviation from guidelines, allocation/tax consequences, arrears and attorney fees, June 2012
- Loney-Heck v. Heck – support matter that involved income calculation, alimony or equitable distribution as income and gifts not income, March 2005
- Miller v. Miller – spousal support entitlement matter, adequate legal cause to leave marital home, November 2004
- Perrotti v. Meredith – support matter that involved alimony pendente lite (APL), common law marriage and entitlement, September 2004
- Pitts v. Tate – support matter involving enforcement and IRS tax intercept program, November 2005

- Eisenhour v. Eisenhour – divorce matter involving marital settlement agreement (MSA), protective orders, breach of oral MSA, divorce code (termination of property rights and res judicata), statute of limitations, promissory estoppel. unjust enrichment and lack of personal jurisdiction, August 2016
- Tuzzato v. Tuzzato – divorce matter involving the college expenses provision of MSA, December 2014
- Eugene v. Eugene – divorce matter involving MSA alimony obligation, enforcement and doctrine of legal impossibility, March 2014
- Stelter v. Stelter – alimony matter involving petition to modify, double dipping and pension income, July 2013
- Kauffman v. Kauffman – equitable distribution matter which found that overall distribution of marital estate 85%-15% in husband's favor was equitable since marriage was only three-and-a-half years long, July 2001
- Bretz v. Bretz – divorce matter involving a 32-year marriage, alimony modification, changed circumstances and voluntary reduction of income, June 1999
- Wiebner v. Wiebner – divorce matter involving bankruptcy discharge, valuation and overall distribution, June 1998

Publications

- "Arbitration and Mediation — The Ideal Options to Resolve Family Law Cases Today" Pennsylvania Bar Association Family Lawyer, Volume 43, Issue No. 1. (Spring 2021)
- "Evaluating Credibility of Witnesses – Are We Instructing Jurors on Invalid Factors?" Co-Authored with Aldert Vrij, Ph.D. Journal of Tort Law (2019). Reading Lies: Nonverbal Communication and Deception, Annual Review of Psychology. (January 2019)
- "Parenting Coordination in Custody Cases Returns to Pennsylvania." The Pennsylvania Psychologist. (October 2018)
- "Permitting Jurors to Ask Questions During Trials: One Solution to the Problem of Curious Jurors Conducting Electronic and Social Media Research." The Pennsylvania Lawyer. (January/February 2017). National Center for State Courts Jur-E Bulletin. (January 13, 2017)
- "The 'Attached' Family Law Lawyer and Judge - The Importance of 'Attachment' in Custody Cases." Co-authored with Ashley Milspaw, Psy.D. The Pennsylvania Lawyer. (June 2015)
- "Avoiding Tweeting Troubles, Facebook Fiascos and Internet Imbroglios – Adapting jury instructions for the age of social media." The Pennsylvania Lawyer. (September/October 2014). National Center for State Courts Jur-E Bulletin. (October 2014)
- "Training DVD Helps Person in Charge of 'Supervised Visitation'." National Office of Child Support Enforcement Child Support. (August 2012)
- "Improving Pennsylvania's Justice System Through Jury System Innovations." Co-authored with Prof. Elizabeth Francis. Widener Law Journal. (2009)

Presentations

- "Arbitration Contracts," Pennsylvania Bar Institute 4th Annual Contracts Workshop, August 12, 2021

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optimaladr.com/our-team/jeannine-turgeon

Arbitration and Mediation — The Ideal Options to Resolve Family Law Cases Today

By Hon. Jeannine Turgeon (Ret.)

Alternative Dispute Resolution (ADR) methods such as Mediation and Arbitration have provided a confidential and less costly way to resolve disputes for decades. Today, especially during the current COVID-19 pandemic and ensuing court delays and backlogs, more than ever before, ADR provides litigants a path for a much more expeditious resolution of their disputes than our judicial system can possibly provide.

We are all living in unprecedented times because of this historic worldwide pandemic. Today's unfamiliar state of affairs, compounded court backlogs, in addition to increasingly more stressed, angry, and anxiety-ridden clients, provides an opportune situation to adopt these ADR tools as a standard "best practice."

Lawyers have an obligation to resolve their client's issues in the best, most cost-effective and expedient manner. Therefore, you owe a duty to advise your clients about these options and to educate them about the wonderful advantages Arbitration and Mediation provide versus standard litigation.

I encourage every lawyer to set aside five minutes now, as you read this article, to craft a letter to all your clients, carefully explaining these benefits:

1. Prompt resolution of their dispute
2. Maintain confidentiality of their personal life and business matters
3. Ability to select their Arbitrator/ Mediator
4. Ability to personally design their settlement agreement in Mediation
5. Avoid expensive litigation
6. Avoid increasing hostility, acrimony, and permanently damaged relationships
7. Avoid years of potential appeals and related expenses

More than 90% of all lawsuits settle out of court, most of them virtually on the courthouse steps, after months or years of preparation and expense. So why not hire a professional Mediator or experienced Arbitrator to help resolve some of your cases now?

ARBITRATION

Arbitration is an excellent, beneficial alternative to litigation. It provides the parties a final resolution of their case by an experienced lawyer or retired judge they

personally select to obtain "closure," expeditiously and confidentially. It is much less costly than acrimonious litigation and appeals. Ask your clients the following simple three questions:

1. Would they like to have their case finally resolved in a month from today?
2. Would they appreciate being able to select their fact finder vs. an unknown or known Hearing Officer or Judge?
3. *Would they prefer for their personal and business information to remain confidential rather than revealed in a public courtroom and permanent public record?*

Expeditious and Prompt resolution

An Arbitrator can schedule a hearing promptly, hear the case without interruption in a day or two, and issue a decision within a week or two. What client wouldn't love to know their case could be resolved that quickly? The longstanding legal maxim "***Justice delayed is justice denied***" could not be more pertinent to every litigant today.

The prompt scheduling of an Arbitration depends primarily on the lawyers providing discovery, preparing pre-hearing statements, determining what issues they want decided, and scheduling a mutually convenient Arbitration hearing date for the parties, lawyers, and witnesses.

The Revised Uniform Arbitration Act (RUAA), the most current law governing agreements to arbitrate in Pennsylvania, gives Arbitrators broad discretion to conduct the proceedings in a manner appropriate for the fair and expeditious disposition of the matter, including conducting pre-hearing conferences, determining the admissi-

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bility, relevance, materiality and weight of any evidence, issuing subpoenas for the attendance of a witness or production of evidence, permitting witness depositions for use at the hearing, and managing discovery, including protective orders to prevent disclosure of privileged or confidential information. An Arbitrator also may award reasonable attorneys' fees and expenses as authorized by law or by the parties' agreement, as well ordering remedies the Arbitrator deems just and appropriate under the circumstances. In fact, an Arbitrator under the law has broad discretion to fashion equitable remedies that even a court may not be able to award. The fact that a remedy could not be granted by a Court is not grounds to vacate an award. An Arbitrator's decision may not be vacated or modified by a Court unless it is clearly shown that a party was denied a hearing, or that fraud, misconduct, corruption, or another irregularity caused the rendition of an unjust, inequitable, or unconscionable award. Thus, absent those extremely rare circumstances, parties do not face a future of expensive and endless litigation and appeals and can receive a final, prompt, and fair resolution of their dispute.

Confidentiality

Arbitration proceedings are private and confidential. Most clients, if they seriously thought about it, probably would shudder at the thought of their most personal life or private business matters being presented in a courtroom open to the public and recorded for the never-ending future. Confidentiality is extremely important in most cases.

Arbitration decisions may be filed under seal upon court approval and are inaccessible to the public, absent very unusual circumstances. *See Pa. Nat'l. Mut. Cas. Ins. Group v New England Reinsurance Corp.* No. 20-1635 and 20-1872 (3rd Cir. 2021) and *Pansy v Borough of Stroudsburg*, 23 F.3d 772 (3rd Cir. 1994). In family law matters, many courts do not allow public review of family law dockets. Disallowing public access to family law matters and keeping them confidential is based upon the consensus that to do so would result in "specific harm" to the family members, including the children, which overcomes the common law presumption of public access to judicial records. It is therefore very unlikely that any court would permit an Arbitration decision filed under seal to be opened.

The Law regarding Arbitration in Family Law Matters

Some lawyers incorrectly believe that family law cases cannot utilize Arbitration. In fact, parties may agree to arbitrate nearly every type of family law dispute. Family law attorneys have always appreciated the benefits of Mediation and, more recently, Parenting Coordination for minor disputes following a custody order. However, Arbitration is also available for custody at any time. *See*, "*What's In A Judge's Toolbox For Children in High-Conflict Families Without Parenting Coordinators*? By Hon. Jeannine Turgeon and Hon. Katherine B.L. Platt, *PA Family Lawyer*, Vol. 35, Issue No. 3, September 2013.

Courts are ill-equipped to resolve custody cases. Most judges, lawyers, psychologists, and litigants have long recognized that a courtroom is not the ideal forum in which to resolve custody and parenting issues. As I have previously written: when parents place their children's emotional health at risk by continuing conflict, we need an alternative process to promptly resolve those cases. *See id.*, p.96.

Many counties cannot fund a custody system to handle custody issues adequately, promptly, and appropriately, and those that do cannot devote sufficient resources to serve families when problems need immediate attention. I and many others firmly believe parents and their children need a more responsive, efficient, less expensive, and less destructive process, removed from the court's adversarial system.

Nearly 30 years ago, Pennsylvania's Superior Court approved agreements to arbitrate custody disputes, in *Miller v. Miller,* 620 A. 2d 1161 (Pa. Super. 1992). The Court found that agreements to arbitrate child custody disputes under our Uniform Arbitration Act are not void as against public policy. The well-respected (former) President Judge of the Court, the Hon. Kate Ford Elliott, articulated as follows:

> [W]e agree with Mother that Arbitration generally is a favored remedy as it permits parties to agree to resolve disputes outside the court system. [citations omitted]. Courts benefit from reduced congestion and parties benefit by having their disputes resolved in a private forum by self-chosen judges. We acknowledge Arbitration has been used more frequently in other jurisdictions as a viable means of resolving domestic disputes that arise under separation agreements. [citation omitted]. We agree that parties should be able to settle their domestic disputes out of court, and

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> concur in Mother's contention that parties who have agreed to arbitrate should be bound by that decision and that arbitration provisions regarding custody are not, as determined by the trial court, void as against public policy.

Id. The court concluded that a court may review an Arbitration decision regarding custody, utilizing the "best interests of the child" standard.

The recently proposed Uniform Family Law Arbitration Act, endorsed by the PBA Family Law Section and the Pennsylvania Chapter of the American Academy of Matrimonial Lawyers, will provide further authority for binding Arbitration of equitable distribution, support, alimony *pendente lite*, alimony and custody. "*Why Pennsylvania Needs to Adopt the Uniform Family Law Arbitration Act"* by Robb D. Bunde and Carolyn Moran Zack, *PA Family Lawyer*, Vol. 43 Issue No. 1, 2021. The proposed legislation also provides for confidentiality in the Arbitration proceedings and requires awards to be filed under seal.

Utilizing Arbitration for "minor" custody issues is equally important. The stress on children is harmful no matter the disagreement-large or small. Justice Max Baer, then a Family Court judge, opined in *Livingston v. Lando*, 32 Pa. D. & C.4th 182 (Allegheny C.P. 1996) that day-to-day "minor" custody issues were not appropriate issues for a trial court to decide, eloquently explaining:

> We believe that, absent some exigent circumstance, which was not averred in this case, neither the issue of Children's athletic or CCD schedule constitutes a "major decision affecting the best interest[s]" of Children, and thus neither is a legal custody issue properly before this court. While these matters certainly involve issues of convenience and control to the parents, they are simply not of major lasting consequence to Children, and therefore not appropriate for our adjudication. While we are saddened that the parties have reached impasse on these types of issues, and at a humanistic level are tempted to intervene to break that impasse, in the end we would do Children more harm than good by assuming the day-to-day parenting decisions, a function we are ill-equipped to carry out, and do parents more harm than good by creating the illusion that we will always be there when they disagree. To decide otherwise is to inappropriately micromanage this family. We cannot and will not decide whether Children should take aspirin or Tylenol; wear a raincoat or a heavy coat on a chilly-drizzly day; put on no. 4 or no. 45 sunscreen on a hot day; have their hair cut by "Joe" or "Joanne," or the like. Likewise, we will not involve ourselves in whether Children should play football, plat-form hockey, or soccer, or whether they should play any of these sports in Father's neighborhood, Mother's neighborhood, neither or both. … Nor will we decide whether Children should take Catholic education in parochial school or church, or in either party's particular neighborhood.

Id. at 186-87.

Personal Selection of the Arbitrator

While you and your client cannot select the Hearing Officer or Judge who will hear and decide your case, you have the ability to select the Arbitrator. Many seasoned retired judges and experienced lawyers provide private Arbitration. Most lawyers who have utilized Arbitration agree that getting their case resolved promptly by a distinguished former judge or experienced reputable family law attorney who will be patient and respectful to you and your clients, and display a sincere interest in giving the case their undivided attention to resolve all the issues raised fairly for all parties, is oftentimes a very preferable option.

Avoid Expensive Litigation and Related Expenses

The legal fees and costs for preparing pleadings and handling discovery, motions, and other seemingly endless litigation issues can well exceed the benefits for some litigants. Once the Arbitrator issues a decision, the case is resolved, without the necessity of litigation expenses and endless appeals. Some litigated family law cases exceed $25,000 or even $100,000 and appeals can cost upwards of $50,000. Arbitrator's hourly or daily fees rarely are close to those figures! Most clients shudder at the prospect of the never-ending post-hearing, post-trial, and appeal process and accompanying expenses. Your clients deserve to know an Arbitration's comparable costs to litigation and potential appeals.

MEDIATION

Mediation, of course, also provides clients with the benefits of potentially resolving their dispute promptly, maintaining confidentiality of their personal life and

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confidential business matters, selecting their Mediator personally, and avoiding expensive litigation and appeals.

Mediation, however, provides additional benefits:

* Ability to personally design their settlement agreement
* Avoiding increasing hostility, acrimony, and permanently damaged familial relationships.

Mediation provides litigants the opportunity to reach a resolution through proven mediation methods, techniques, and approaches. The Mediation process empowers parties to craft a resolution acceptable to both parties rather than pursuing a "scorched earth" tactic that rarely is pleasant or satisfying to either party.

A skilled Mediator will assist both parties to change their approach from destructive to constructive, which in today's world is sorely needed. Utilizing Mediation as an alternative to litigation of family law cases has received widespread praise from attorneys, mental health professionals and judges. As two noted Mediation experts observed in relation to child custody and visitation cases: ''Courts are ill-equipped to mandate particular visitation schedules and custodial arrangements, the wisdom of which depend on the situations of the parents and children rather than on legal rules." Nancy G. Rogers and Craig A. McEwen, *Mediation Law Policy Practice*, 230 (1989).

Our Courts have also acknowledged the importance of negotiated custody agreements outside the judicial system, describing the benefits as follows:

> The law looks with favor upon resolution of custody disputes that are settled privately [citation omitted]. It is desirable for divorcing parents to settle their differences without the intervention of the court system wherever possible. …
>
> Divorced or separated parents may differ on questions relating to their children. For those parents to work out a mechanism themselves whereby they resolve those conflicts privately is to be encouraged. Such a mechanism, once forged, may set a pattern for resolution of later disputes as they arise. Such resolutions frequently result in informal agreements. This is not to deny that many divorced or separated parents will not be able to settle their differences without the intervention of the court system. The law should not impede, however, those parents who are able to forge a mechanism for private dispute resolution.

Witmayer v. Witmayer, 467 A.2d 371, 374-75. (Pa. Super. 1983)

Avoid Litigation Likely to Destroy Personal Relationships

Avoiding an acrimonious hearing or trial where relationships and reputations are destroyed forever, leaving everyone damaged, is always an important factor to seriously consider. Hiring a Mediator experienced in every aspect of the family dynamic, children's issues, and family law, trained in best practices to aid the parties in reaching a fair resolution, almost always results in a better outcome for everyone. No one side leaves the courtroom angry at the other side, bitter, or as is often the case, angry with you, their lawyer, for not getting them everything they perhaps unreasonably demanded or expected.

The beauty of Mediation is that the parties themselves, empowered with the assistance of a trained Mediator, as they negotiate their own individually crafted agreement, realize, and learn that they are now finally capable of resolving disagreements themselves. Ideally, the process will set the stage for the creation and development of a "problem solving" relationship between the parties.

After reaching an agreement, thankfully, the parties are at long last, able to utilize their energies towards more positive things in their and their children's lives.

Ability to Personally Design Settlement Agreement

Mediation provides everyone the opportunity to resolve their case in ways that sometimes even judges cannot.

Explain to your clients that Mediation empowers them to resolve their dispute in a way that responds to their specific individual needs. They are the best ones to define the parties' genuine needs and actual issues (beyond the "cause of action" or "new matter," preliminary objections, and other legal pleadings). Many solutions that are not law-based can be more satisfactory to litigants' real interests in the long run than simply what remedy a judge can order under the constraints of the law.

It allows for solutions "outside the box" a judge couldn't award in some situations. For example, some couples agree that moving children from house to house constantly is not conducive to a stable childhood and agree to "nesting," whereby the children remain in

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the family home and the parents bear the burden of changing residences during their "custodial" time with the children. A judge could not order such an arrangement under the law. Many other co-parenting innovative arrangements a judge might never consider can meet both parties' and their children's' schedules and individual needs. Similarly, in a divorce, where the parties both own a profitable small business and neither wants to sell the business nor do they want the judge to "equally distribute" their business to the other party, through effective "active listening," the Mediator may learn that the parties manage the business quite well together, even if they cannot live together peacefully. The experienced Mediator might encourage exploring the concept of allowing them both to maintain their rewarding roles in the business they love and simply establish a formal business partnership, defining each party's role in the business based upon their separate skills, allowing them to divorce but maintain a profitable business, benefitting them both as well as their employees. A Hearing Officer or Judge could not issue such an "equitable distribution" order, nor would a hearing officer or judge likely have the time to explore such options with the parties. Instead, the profitable family business likely would be lost by one or both parties. Thinking "outside the box" has solved many disputes whereby it's a "win-win" outcome rather than "lose-lose."

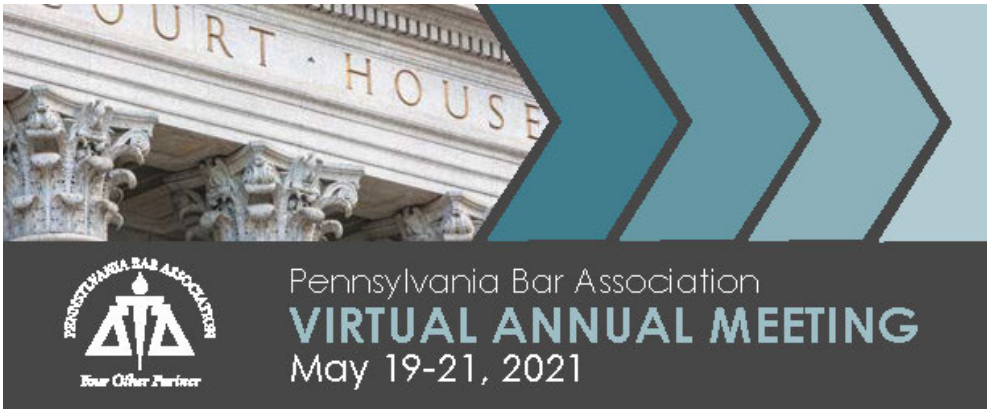
If the parties do not reach an agreement, the parties still have the option of Arbitration or court litigation, so they are not losing any legal rights. They can be gratified for the rest of their life however, knowing that they at least attempted in good-faith to resolve the dispute peacefully and fairly by participating in the Mediation process.

Conclusion

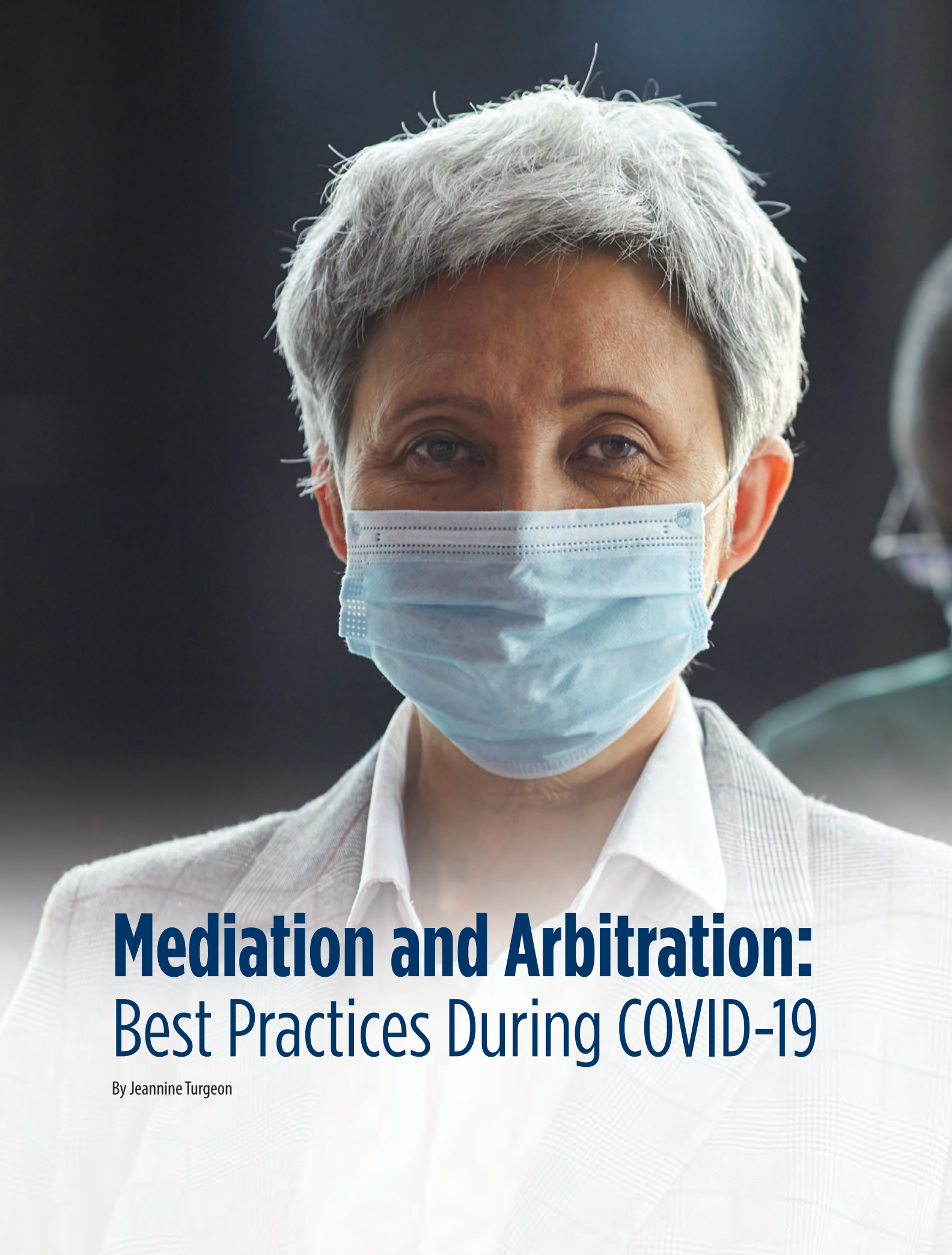
In this unprecedented time of stress, anxiety, and uncertainty, coupled with increasing Court backlogs and delays, there could never be a better and more opportune time to recommend these alternative dispute resolution options to your clients. An Arbitrator can resolve all issues expeditiously, while providing the parties all the protections necessary for a fair and just resolution of the issues. A Mediator can expertly guide and assist the parties to reach an agreement, allowing the parties themselves to resolve their own case in their own family's best interest, avoiding the expensive and destructive nature of litigation that frequently results in increased hostility and acrimony, permanently damages relationships, and permanently wounds their children.

Now is the time for all family law lawyers to come to the aid of their clients — to communicate and counsel them about the numerous benefits of Mediation and Arbitration.

Judge Jeannine Turgeon (Ret.) served as judge on Dauphin County Court of Common Pleas over 28 years and also served as administrative judge for its Family Court. Her passion for improving our judicial system includes serving as a member and chair of the Pennsylvania Supreme Court Domestic Relations Committee, Joint Task Force on Parenting Coordination, chair of the Family Law Section of the Pennsylvania Conference of State Trial Judges, as well as the Pennsylvania Sentencing Commission and vice chair of the Pennsylvania Supreme Court Suggested Standard Civil Jury Instructions Committee. She currently provides arbitration, mediation and litigation consultation at Optimal ADR. She can be reached at JT@optimaladr.com or 717-556-1024.



Click here for more information on the PBA Annual Meeting.



Mediation and Arbitration: Best Practices During COVID-19

By Jeannine Turgeon

Are mediation and arbitration ideal options to resolve disputes during the current court "slowdown"? Can these alternative dispute resolution methods provide more prompt access to justice and final resolution of litigants' disputes than our judicial system during the current pandemic and ensuing backlog?

Alternative dispute resolution (ADR) methods such as mediation and arbitration have been recognized to be a less costly and more expeditious way of resolving disputes. While these ADR methods are tools you've likely had in your toolbox, you may have been so caught up in battling emails, grinding out progressively more contentious motions and reply motions, drudging up old case law and writing briefs, futilely discussing possible legal tactics (albeit by Zoom these days) with increasingly more angry and anxiety-ridden clients as you churn out another email or text message that your ADR tools have been neglected and may be a bit rusty. Now might be the ideal opportunity to adopt these ADR methods as best practices.

We are all living in unprecedented times. When in our lifetime have our courts been not just backlogged, but totally shut down, as happened in the spring of 2020 and perhaps even now as you read this in 2021? When have entire court units been furloughed for months? When have jury trials and bench trials been delayed not just for a few weeks, but perhaps for a year? Some courts continue to face obstacles to conducting hearings remotely utilizing Zoom or similar platforms, and even in courts that have "reopened," many proceedings are still limited.

Lawyers have an obligation to resolve their clients' issues in the most cost effective way and in shortest time possible.

As slowdowns and backlogs continue to burden the courts, resolving cases utilizing ADR will benefit our entire judicial system.

Most litigants, even if provided the opportunity to be personally present in a courtroom before a judge, jury, master or hearing officer, must consider the physical danger they place themselves, their lawyers, their families and witnesses in due to the highly contagious nature of the deadly COVID-19 virus. Although as I write this we have the promise of effective immunization drugs, we will not have an adequate supply for everyone for maybe another year, and some experts project that many people will refuse to take them. In that case, COVID-19 and its progeny may be around for years, and we will continue to face remote/Zoom hearings and delays for clients to obtain a trial date.

Lawyers have an obligation to resolve their clients' issues in the most cost-effective way and in the shortest time possible. More than ever before, the benefits of ADR should be discussed with every client because you owe a duty to your clients to advise them about all of the alternatives for resolving their case. Furthermore, as slowdowns and backlogs continue to burden the courts, resolving cases utilizing ADR will benefit our entire judicial system. I encourage every lawyer to take time today, maybe as you read this article, to draft a letter (rather than an easily deleted email) that you can send to all your clients that describes the following benefits and factors to provide them with the ability to understand and consider their ADR options.

Mediation

Mediation differs from other dispute resolution processes, such as binding arbitration and litigation, in that the parties themselves make the decisions in crafting their settlement agreement terms. The process provides litigants with the opportunity to work together with an impartial and trained mediator to reach a resolution through various mediation methods, techniques and approaches. Lawyers do not need to be present during the mediation, but they can be consulted by their clients at any time. The mediator has no authority to make any binding decisions or compel the parties to make any agreement. All settlement offers made during the process are inadmissible in any subsequent judicial

proceeding and by agreement are privileged communications. Explain to your clients that mediation empowers them to resolve their disputes in a way that responds to their specific individual needs. They are the best ones to define the real issues (beyond the "cause of action," "new matter," preliminary objections and other legal pleadings). It also allows for solutions "outside of the box" that judges are unable to award in some situations. The mediation process empowers parties to craft a resolution acceptable to both, rather than pursuing a "scorched earth" tactic, which rarely is pleasant or satisfying to either of them. A mediator will assist both parties to change their approach from destructive to constructive, which is sorely needed in today's world. The parties are empowered to negotiate their own individually crafted settlement in order to resolve their dispute, move forward and use their energies toward more positive things in their lives.

Avoiding uncompromising destructive litigation by utilizing mediation is extremely useful where the parties are involved in an ongoing relationship and will need to interact in the future, such as in the following situations:

- Conflicts between business partners
- Employment disputes
- Child custody and equitable distribution cases
- Arrangements for the care of an elderly relative.

Mediation provides an opportunity to produce win-win solutions to old and bitter fights that would otherwise only leave both sides damaged. Explain to your clients that agreeing to mediation doesn't limit them, if they do not reach an agreement, from proceeding to arbitration or the courts.

Arbitration

Should the parties be unable or unwilling to mediate a settlement, arbitration pro-

ADR methods are tools you've likely had in your toolbox, [but] … your ADR tools have been neglected and may be a bit rusty.

vides an alternative process to finally resolve their disagreement without the prospect of expensive and acrimonious litigation and appeal costs.

Several years ago, Pennsylvania adopted the Revised Uniform Arbitration Act, 42 Pa. C.S.A. 7321.1-7321.31 (RUAA), the most current law governing agreements to arbitrate in Pennsylvania. Parties may agree to arbitrate nearly every dispute in civil law and many disputes in family law. Family law practitioners have greatly appreciated the benefits of mediation as well as the arbitration of custody disputes utilizing parenting coordinators or "arbitrators to coordinate parenting." (Hon. Jeannine Turgeon and Hon. Katherine B.L. Platt, "What's in a Judge's Toolbox for Children in High-Conflict Families Without Parenting Coordinators?" 35 *Pa. Family Lawyer*, No. 3, Sept. 2013) The proposed Uniform Family Law Arbitration statute will provide a specific framework for binding arbitration of equitable distribution, spousal support, alimony pendente lite, alimony and counsel fees. It will permit judicial review of an arbitrator's child custody and support awards. (Carolyn Moran Zack, "Why Pennsylvania Needs to Adopt the Uniform Family Law Arbitration Act" 42 *The Pennsylvania Lawyer*, No. 2, March/April 2020)

When the parties select the arbitrator, they then also determine what issues they agree the arbitrator shall decide. The RUAA gives arbitrators broad discretion to conduct the proceedings in a manner appropriate for the fair and expeditious disposition of the matter, including conducting prehearing conferences; determining the admissibility, relevance, materiality and weight of any evidence; issuing subpoenas for the attendance of a witness or production of evidence, permitting witness depositions for use at the hearing; and managing discovery, including protective orders to prevent disclosure of privileged or confidential information. An arbitrator also may award reasonable attorneys' fees and expenses as authorized by law or by

the parties' agreement, as well order remedies the arbitrator deems just and appropriate under the circumstances.

An arbitrator's decision is binding and may not be vacated or modified by a court unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award. The fact that a remedy could not or would not be granted by a court is not grounds to vacate an award.

Thus, by agreeing to arbitration, parties do not face a future of endless litigation and the time and expense of appeals, but rather enjoy a prompt and fair resolution of their dispute.

Benefits of Mediation and Arbitration

Lawyers should include the following benefits when explaining the benefits of mediation and arbitration to their clients:

1. Prompt resolution of their dispute
2. Confidentiality of their personal life and business matters
3. Ability to select their mediator/arbitrator
4. Avoiding expensive and acrimonious litigation
5. Ability to personally design their settlement agreement
6. Avoiding appeals and related expenses

Promptness

Unlike the court system, the pace of the proceedings is limited only by the availability of you and your client, the opposing party and his or her lawyer and the mediator or arbitrator — not the availability of the judge and the multitude of other parties and lawyers filling the judge's docket. You could schedule a mediation or arbitration proceeding likely within the next 15 to 60 days versus a court date impacted by current court scheduling backlogs and delays. What client wouldn't love to know his or her case could be resolved that quickly? The longstanding principle of "Justice delayed is justice denied" could not be more pertinent to every litigant today.

Confidentiality

Mediation and arbitration proceedings are private and confidential. Most clients, if they seriously think about it, probably shudder at the thought of their most personal life or business matters being recorded for the never-ending future in addition to being presented in an open courtroom witnessed by whoever passes though the courtroom or obtains transcripts filed in the prothonotary's office. This factor may be extremely important in some cases.

Selection of the Mediator/Arbitrator

An additional factor to discuss, of course, is that while you and your client cannot select which hearing officer or judge will hear and decide the client's case, you do select whomever you and opposing counsel agree to serve as the mediator or arbitrator. Many seasoned retired judges and experienced lawyers provide private mediation/arbitration services for those who believe in getting their cases resolved promptly. They believe it is worth investing in these alternative ways to serve litigants by providing a prompt administration of justice. The personally selected mediator/arbitrator functions based upon detailed private agreements signed by the parties that set forth his or her fees, scope of authority and other relevant issues.

Avoiding litigation likely to destroy personal or business relationships

Avoiding an acrimonious hearing or trial where personal or business relationships and reputations are destroyed forever may also be an important factor. The inevitable irreparable harm from bitter litigation must be considered not only in family law cases but also in cases involving other continuing affiliations.

Explain to your clients that mediation empowers them to resolve their dispute in a way that responds to their specific individual needs.

Many times, a litigant wants more than simply a court order — an apology or perhaps reestablishment of a positive relationship.

An arbitrator under the law has broad discretion in fashioning equitable remedies.

Ability to personally design settlement agreement

Mediation provides clients the opportunity to resolve their case in ways that they can individually create, which sometimes even judges cannot. The law doesn't provide a remedy for every wrong. Sometimes solutions are limited by the law. Many times, a litigant wants more than simply a court order — an apology or perhaps reestablishment of a positive relationship. Maybe rather than removing a fence across a property line, parties may agree to share its cost and upkeep. Many solutions that are not law-based can be more satisfactory to litigants' real interests in the long run than the remedy a judge can order. In fact, an arbitrator under the law has broad discretion in fashioning equitable remedies.

Avoiding lengthy appeals and related expenses

The costs of endless unnecessary litigation can well exceed the benefits for some litigants. If parties reach an agreement following mediation, their case is resolved without litigation expenses and unending appeals. If the parties agree to arbitration, following the arbitrator's decision, you and your client will not face the likelihood of appeals that go on for years before the case is finally resolved. Most clients loathe the prospect of the never-ending post-hearing, post-trial and appeal process. Accomplishing a final resolution is likely the goal of most lawyers and litigants.

Conclusion

Paying lawyer's fees can be a great economic burden on most litigants, and the thought of having to pay a mediator or arbitrator may initially seem "unaffordable." However, when the benefits of promptly resolving the case and the confidentiality of proceedings are weighed against the prospect of paying thousands of dollars more for acrimonious litigation and endless appeals, mediation or arbitration is likely to be more economical, in addition to being more expeditious.

More than 90% of all lawsuits are settled out of court, most of them virtually on the courthouse steps after months or years of preparation and expense. So why not hire a professional mediator or experienced arbitrator to help resolve some of your cases now, when you do not know when you will even get a court date? It isn't necessary to wait for a court date or for your clients to conduct their personal issues in public if you and the opposing party can agree to mediate or arbitrate the dispute.

In these days of uncertainty — and increasing and unavoidable court backlogs and delays that will further burden our justice system — there could never be a better and more opportune time to recommend alternative dispute resolution options to your clients. Now is the time for good lawyers to come to the aid of not only their clients but also of our entire justice system and select mediation or arbitration to resolve their cases. ⚖

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Jeannine Turgeon was the first woman elected judge for the Court of Common Pleas of Dauphin County and was supervising judge of Dauphin County's first Family Court. She retired from the bench in 2020 in order to join other retired judges at Optimal Dispute Resolutions as a mediator, arbitrator and litigation advisor: www.optimaladr.com.

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Why Pennsylvania Needs to Adopt the Uniform Family Law Arbitration Act (UFLAA)

By Carolyn Moran Zack and Robb D. Bunde

On Friday, Nov. 20, 2020, the Pennsylvania Bar Association House of Delegates voted to approve the PBA Family Law Section's resolution to support a modified version of the Uniform Family Law Arbitration Act (UFLAA). State Representative Kate Klunk will be the prime sponsor of the bill and it is anticipated that bill will be introduced in this year's legislative session. This article will provide an overview of the proposed UFLAA and summarize the benefits that will flow from adoption of this legislation for family law litigants, their advocates, and the family court system in general.

a. History of the UFLAA. Family law arbitration has been around for many years but efforts to provide procedural and statutory guidance are relatively new. The Uniform Law Commission ("ULC") appointed a Family Law Arbitration Study Committee in 2012 and, after considering the feasibility and desirability of a uniform or model act on family law arbitration for several months, the Study Committee unanimously recommended that a drafting committee be appointed to develop an act on family law arbitration.[1] The proposed model act was intended to contain the features of arbitration law that are essential for family law arbitration but are not typically addressed in commercial arbitration statutes.[2] The drafters concluded that a free-standing act would repeat much existing arbitration law and, therefore, the model UFLAA incorporates by reference a state's existing arbitration law (e.g., the UAA or the RUAA) for many steps in the arbitration process.[3] The ULC noted that while the use of arbitration is "on the rise" in the United States, state law has generally not kept up with this trend, and the UFLAA was drafted with the intent to promote the fairness and efficiency of the process and to protect the interests of vulnerable family members.[4] The UFLAA was approved by the American Bar Association in 2017 and, to date, has been enacted in three states: Arizona, Hawaii, and North Dakota.[5]

b. Development of Pennsylvania's UFLAA. This draft legislation is based on the recommendations of the Family Law Section's UFLAA Task Force, which the authors co-founded in spring 2020. The Task Force consists of 17 members, including several members of the PBA ADR Committee. The Task Force has worked closely with Fredrick Cabell Jr., the PBA's Director of Legislative

Affairs, Ashley P. Murphy, the PBA's Legislative Counsel, and Vincent C. Deliberato, Director of the Pennsylvania Legislative Reference Bureau, in drafting the proposed legislation. The Task Force has obtained support for the proposed legislation from various stakeholders including the PBA Board of Governors and House of Delegates, the PBA Family Law Section, the Pennsylvania Chapter of the American Academy of Matrimonial Lawyers, the PBA Children's Rights Committee, and the PBA ADR Committee.

c. Why Now? The UFLAA is timely for several reasons. COVID-19-related shutdowns have caused the courts to have severe backlogs, especially in counties with a high number of pro se litigants. There is a demonstrated need for alternatives to court adjudication, and binding arbitration is an attractive ADR option for many reasons. In addition, Pennsylvania's arbitration statute was amended July 1, 2019, to prohibit common law arbitration going forward. As of that date, arbitrations can only be conducted under the Revised Uniform Arbitration Act ("RUAA") which is a commercial arbitration statute not tailored to family law issues. In the absence of a family law specific arbitration statute, there are many open questions about how these unique family law issues will be handled. Another compelling reason is that, without family law arbitration legislation in place, the concept is not well known in all parts of the state and is therefore underutilized. We hope that the adoption of the UFLAA will educate the bench, bar, and public about the benefits of arbitration, promote its more widespread use, and instill confidence in the fairness and efficiency of the process. The use of binding arbitration under the UFLAA is completely voluntary. The court may not impose this pro-

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cess on the parties, but rather it is a process they choose freely by entering a written agreement to arbitrate.

d. What Does the UFLAA Provide? The UFLAA permits arbitration of issues that would arise under Pennsylvania's domestic relations statute, such as equitable distribution of property and debt, spousal support, alimony *pendente lite* and alimony, counsel fees, and interpretation of marital agreements.[6] The UFLAA excludes from arbitration status determinations such as the termination of parental rights, the approval of an adoption or guardianship, the entry of a divorce or annulment decree, and the dependency or delinquency of a child.[7] The UFLAA supplements the law of arbitration as provided in Pennsylvania's RUAA, and in the event of a conflict between the two, the UFLAA controls.[8] In determining the merits of a dispute, the arbitrator shall apply the law of the Commonwealth, including its choice of law rules.[9] All arbitration awards must be confirmed by the court before they are enforceable as a judgment.[10] Such arbitration awards are modifiable as provided by law; if a party requests such modification, the parties may proceed under the dispute resolution process designated in the award or judgment or, in the absence of such a provision, agree to arbitrate the modification before the same or a different arbitrator or proceed in court as provided by statute and procedural rules.[11]

e. Arbitration Awards Are Generally Binding. Except for child-related awards (which are subject to judicial review as explained in more detail below), arbitration awards of family law claims are generally binding on the parties. There is no right of substantive appeal to the trial court or appellate courts. The UFLAA does ensure, however, that the process by which the arbitrator issued the award comports with principles of fairness and due process.

Prior to confirmation of an award, the **arbitrator** may correct the award on motion of a party made not later than 20 days after issuance of the award if it has an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property, or to clarify the award.[12]

The **court** may also correct an unconfirmed award on motion of a party within 30 days of issuance of an award, if the award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property, or the arbitrator made an award on a family law dispute not submitted to the arbitrator, and the award may be corrected without affecting the merits of the issues submitted.[13] Alternatively, the court shall vacate an award if the moving party establishes that (1) the award was procured by corruption, fraud or other undue means; (2) there was: (i) evident partiality by the arbitrator; (ii) corruption by the arbitrator; or (iii) misconduct by the arbitrator substantially prejudicing the rights of a party; (3) the arbitrator refused to postpone a hearing on showing of sufficient cause for postponement, refused to consider evidence material to the controversy or otherwise conducted the hearing contrary to the designated powers and duties of the arbitrator, so as to prejudice substantially the rights of a party; (4) the arbitrator exceeded the arbitrator's powers; (5) no arbitration agreement exists, unless the moving party participated in the arbitration without making a motion for judicial relief before the beginning of the first arbitration hearing; or (6) the arbitration was conducted without proper notice so as to prejudice substantially the rights of a party.[14]

A motion to amend or vacate the award must be made within thirty days of issuance of the award, except on the grounds of corruption, fraud or other undue means, in which case the motion must be filed within thirty days that the ground is known or, by the exercise of reasonable care, should be known to the party filing the motion.[15] Other than where vacation is for want of an enforceable arbitration agreement, the court may order a rehearing before an arbitrator; the rehearing shall be before another arbitrator if the award is vacated on account of the arbitrator's corruption, fraud, or other misconduct.[16]

f. Child Support and Child Custody Awards Are Subject to Judicial Review. In Pennsylvania, arbitration of custody disputes is permitted, but is subject to close scrutiny by the court.[17] Because the court will not be bound by such an award, it may be set aside.[18] Parties may also arbitrate child support, but may not agree to less child support than is required for the best interests of the child.[19] The UFLAA permits the arbitration of child custody and child support issues subject to judicial review, consistent with state law. In addition, the UFLAA includes special provisions in such child-related arbitrations to ensure that the children's best interests are being served.

For example, if the parties agree to arbitrate a *future*

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child-related dispute, the agreement is not enforceable unless they affirm the agreement in a record *after* the dispute arises, or the agreement was entered in a family court proceeding, and incorporated in or approved by the court in an order issued in that proceeding.[20] The arbitrator must make written findings supporting an award on a child-related issue.[21] The arbitrator must state the reasons on which a child-related arbitration award is based as required by the domestic relations statute.[22] The UFLAA preserves the *parens patriae* power of the court by requiring that, before it confirms a child-related award, the court must ensure that the arbitrator stated the reasons for the award, and that the award complies with the substantive domestic relations law and is in the best interests of the child.[23]

In addition, the UFLAA gives the court the ability to vacate the child-related award on motion of a party who establishes that the award does not comply with the substantive domestic relations law or is contrary to the best interests of the child, or that the arbitrator's statement of reasons for the award are inadequate to enable the court to review the award, in addition to the other traditional bases (as set forth above) for vacating the award.[24] The court may determine a motion to vacate or amend a child-related award based on the record of the arbitration hearing if it was recorded and any facts occurring after the hearing, or, if the hearing was not recorded, de novo.[25] The UFLAA gives the court the authority to amend the child-related arbitration award, if amending rather than vacating it is in the best interests of the child.[26]

g. Protection of Party or Child. The UFLAA also includes provisions to protect vulnerable family members. For example, if the parties are not both represented, and a party is subject to a protection order or the arbitrator determines that there is a reasonable basis to believe that a party's safety or ability to participate effectively in arbitration is at risk, the arbitrator *shall stay* the arbitration and refer the parties to court.[27] The arbitration may not proceed unless the party at risk affirms the arbitration agreement in a record and the court determines: (i) the affirmation is informed and voluntary; (ii) arbitration is not inconsistent with the protection order; and (iii) reasonable procedures are in place to protect the party from risk of harm, harassment, or intimidation.[28]

In addition, if all parties are not represented and the arbitrator determines that there is a reasonable basis to believe a child who is the subject of a child custody dispute is abused or neglected, the arbitrator *shall terminate* the arbitration of the child custody dispute and report the abuse or neglect to the court or to another appropriate authority.[29] The arbitrator is authorized to make a temporary award to protect a party or child from harm, harassment or intimidation.[30] On motion of a party, the court may stay an arbitration and review a determination or temporary award under this section.[31] These provisions supplement remedies available by law for protection of victims of domestic violence, family violence, stalking, harassment or similar abuse.[32]

h. Arbitration Starts with A Valid Written Contract. An arbitration agreement must be: in a record signed by the parties; identify the arbitrator, an arbitration organization or a method of selecting an arbitrator; and identify the family law dispute the parties intend to arbitrate.[33] Such an agreement is valid and enforceable as any other contract and irrevocable, except on a ground that exists at law or in equity for the revocation of a contract.[34] If a party objects to arbitration on the ground that the arbitration agreement is unenforceable or that the agreement does not include a family law dispute, the court shall decide whether the agreement is enforceable or includes the family law dispute.[35] On motion of a party, the court may compel arbitration if the parties have entered into a valid arbitration agreement unless the court determines that the arbitration should not proceed due to protection of a party or child.[36]

Even where a valid arbitration agreement exists, the court may intervene in three important ways: termination, consolidation, and issuance of temporary orders. On the motion of a party, the court shall terminate an arbitration if it determines that: (1) the agreement to arbitrate is unenforceable; (2) the family law dispute is not subject to arbitration; or (3) the arbitration should not proceed due to protection of a party or child.[37] Unless prohibited by an arbitration agreement, on motion of a party, the court may order consolidation of separate arbitrations involving the same parties and a common issue of law or fact if consolidation is necessary for the fair and expeditious resolution of the family law dispute.[38] Before an arbitrator is selected and able to act, on motion of a party, the court may enter a temporary order pursuant to applicable law; and after an arbitrator is selected, if the matter is urgent and the arbitrator is not able to act in a

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timely manner or provide an adequate remedy, on motion of a party, the court may enter a temporary order.[39]

i. Process of Arbitration and Powers of Arbitrator. A party may: (1) be represented in an arbitration by counsel; (2) be accompanied by an individual who will not be called as a witness or act as an advocate; and (3) participate in the arbitration to the full extent permitted by the UFLAA.[40] A party or representative of a party may not communicate ex parte with the arbitrator except to the extent allowed in a family law proceeding for communication with a judge.[41] An arbitrator shall conduct an arbitration in a manner the arbitrator considers appropriate for a fair and expeditious disposition of the family law dispute.[42] An arbitrator shall provide each party a right to be heard, to present evidence material to the family law dispute, and to cross-examine witnesses.[43]

Unless the parties otherwise agree in a record, an arbitrator may: (1) select the rules for conducting the arbitration; (2) hold a conference with the parties before a hearing; (3) determine the date, time and place of a hearing; (4) require a party to provide: (i) a copy of a relevant court order, (ii) information required to be disclosed in a family law proceeding under 23 Pa.C.S. (relating to domestic relations) and the applicable Pennsylvania Rules of Civil Procedure, and (iii) a proposed award which addresses each issue in arbitration; (5) interview a child who is the subject of a child custody dispute; (6) appoint a private expert at the expense of the parties; (7) administer an oath or affirmation and issue a subpoena for the attendance of a witness or the production of documents and other evidence at a hearing; (8) permit and compel discovery concerning the family law dispute and determine the date, time and place of discovery; (9) determine the admissibility and weight of evidence; (10) permit deposition of a witness for use as evidence at a hearing; (11) for good cause, prohibit a party from disclosing information; (12) appoint an attorney, guardian ad litem or other representative for a child at the expense of the parties; (13) impose a procedure to protect a party or child from risk of harm, harassment or intimidation; (14) allocate arbitration fees, attorney fees, expert witness fees and other costs to the parties; and (15) impose a sanction on a party for bad faith or misconduct during the arbitration according to standards governing imposition of a sanction for litigant misconduct in a family law proceeding.[44]

In a child-related proceeding, unless the parties otherwise agree, the arbitrator is empowered to interview a child who is the subject of a child custody dispute; appoint an attorney, guardian ad litem or other representative for a child at the expense of the parties; and impose a procedure to protect a party or child from risk of harm, harassment, or intimidation.[45]

An arbitration hearing need not be recorded unless required by the arbitrator, provided by the arbitration agreement, or requested by a party.[46] An arbitrator shall issue a written arbitration award, dated and signed by the arbitrator, and shall give notice of the award to each party by a method agreed on by the parties or, if the parties have not agreed on a method, as provided in the UFLAA.[47] Except as the parties may otherwise agree (and for child-related awards which have specific requirements, as stated above), the arbitrator shall state the reasons on which an award is based.[48]

j. Confidentiality of Arbitration Proceedings. Unless the parties otherwise agree, the arbitration proceedings and the arbitration award are confidential.[49] Following issuance of an award, a party may move the court for an order confirming the award or, where applicable, entry of a decree incorporating the award.[50] If either party includes in this motion a request that the arbitration award be filed under seal, the court *shall* file the award under seal.[51] This provision furthers one of the key advantages of arbitration over litigation: the parties are able to fully resolve their claims out of the public eye.

k. Enforcement and Appeal of Arbitration Awards. Confirmed arbitration awards shall be enforced by a court in the manner and to the same extent as any other order or judgment of a court.[52] A court shall also give full faith and credit to a family law arbitration award confirmed by a court in another state.[53] Appeals may be taken from an order granting or denying a motion to compel arbitration; an order granting or denying a motion to stay arbitration; an order confirming or denying confirmation of an award; an order correcting an award; an order vacating an award without directing a rehearing; and a final judgment.[54] The UFLAA does not provide for expanded, substantive review of the arbitrator's decision. The standard on appeal is therefore whether the arbitrator or the court erred in applying the UFLAA.

l. Qualifications for, Disclosures by and Immunity of the Arbitrator. The parties' selection of an arbitrator,

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arbitration organization, or method of selection of an arbitrator controls.[55] If an arbitrator is unable or unwilling to act or if the agreed-upon method of selecting an arbitrator fails, on motion of a party, the court shall select an arbitrator.[56] If the parties have not designated their arbitrator/method of selection of an arbitrator, unless they waive these requirements in a record, an arbitrator must be: (1) an attorney-at-law who is trained in domestic violence and child abuse; (2) a former attorney-at-law on inactive status who is trained in domestic violence and child abuse; or (3) a senior judge who is trained in domestic violence and child abuse.[57]

Before agreeing to serve, the potential arbitrator must make reasonable inquiry and thereafter disclose to all parties any known fact a *reasonable person would believe is likely to affect*: (1) the impartiality of the arbitrator in the arbitration, including: (i) bias, (ii) a financial or personal interest in the outcome of the arbitration, or (iii) an existing or past relationship with a party, attorney representing a party or witness; or (2) the arbitrator's ability to make a timely award.[58] An arbitrator, the parties, and the attorneys representing the parties have a continuing obligation to disclose to all parties any known fact a reasonable person would believe is likely to affect the impartiality of the arbitrator or the arbitrator's ability to make a timely award.[59] A party may object to the selection or continued service of an arbitrator and request a stay of arbitration and disqualification of the arbitrator by filing a motion for judicial relief.[60] If a required disclosure is not made, the court may: on motion of a party not later than fifteen days after the failure to disclose is known or, by the exercise of reasonable care should be known by the party, suspend the arbitration; on timely motion of a party, vacate an unconfirmed award; or if an award has been confirmed, grant other appropriate relief under applicable law.[61] If the parties agree to discharge an arbitrator or the arbitrator is disqualified, the parties by agreement may select a new arbitrator or request the court to select another arbitrator.[62]

An arbitrator or arbitration organization acting in that capacity in a family law dispute is immune from civil liability to the same extent as a judge of a court of this Commonwealth acting in a judicial capacity.[63] The immunity provided by this section supplements immunity under applicable law.[64] An arbitrator's failure to make a required disclosure does not cause the arbitrator to lose immunity under this section.[65] Generally, an arbitrator is not competent to testify, and may not be required to produce records, in a judicial, administrative or similar proceeding about a statement, conduct, decision, or ruling occurring during an arbitration, to the same extent as a judge of a court acting in a judicial capacity.[66] If a person commences a civil action against an arbitrator arising from their services or seeks to compel the arbitrator to testify or produce records in violation of the UFLAA, and the court determines that the arbitrator is immune from civil liability or is not competent to testify or required to produce the records, the court shall award the arbitrator reasonable attorney fees and costs.[67] An arbitrator may be required to testify or produce records where it is necessary: (1) to determine a claim by the arbitrator or arbitration organization against a party to the arbitration, or (2) to a hearing on a motion to vacate an award for corruption, fraud or other undue means; evident partiality by the arbitrator; corruption by the arbitrator; or misconduct by the arbitrator substantially prejudicing the rights of a party, if there is prima facie evidence that a ground for vacating the award exists.[68]

Conclusion

The use of binding arbitration under the UFLAA is completely voluntary. The court may not impose this process on the parties, but rather it is a process they choose freely by entering into a written agreement to arbitrate. The UFLAA will aid all participants in the family law arbitration process by providing helpful guidance, including a requirement that the substantive family law be applied to determine the disputes, and that the awards (including alimony, spousal support, alimony *pendente lite*, child support and child custody) are modifiable as provided under applicable law. The UFLAA makes clear that child-related awards are arbitrable, subject to judicial review. It protects the integrity of the proceedings by requiring due process and disclosures by the arbitrator, parties, and attorneys, and by delineating the authority of the court and the arbitrator, and the rights of the participants, from the inception of the arbitration agreement through entry of the award in a judgment. The UFLAA ensures the confidentiality of the proceedings, which is a key advantage of arbitration for family law litigants. The UFLAA protects a party where there is a reasonable basis to believe that a party's safety or ability to participate effectively in

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arbitration is at risk, and a child who is the subject of the proceedings who is suspected of being abused or neglected. It discourages delay by imposing short deadlines for requests to correct or overturn the award. Finally, the UFLAA is uniquely tailored to the needs of family law cases and, thus, provides helpful guidance to the litigants, their advocates, and the court regarding the arbitration of family law issues, thus promoting confidence in the fairness and integrity of the process, as well as enhanced consistency and predictability in the outcomes of family law arbitration awards.

Endnotes

1 Uniform Family Law Arbitration Act, July 8-14, 2016, Prefatory Note at 2.
2 *Id.*
3 *Id*.
4 *Id.* at 4.
5 Uniform Law Commission, *A Few Facts About the Uniform Family Law Arbitration Act (2016)*, (Dec. 2, 2020, 12:00 PM) https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=74b20a78-c77a-8ebb-be2c-c96b8b30f9e7&forceDialog=0.
6 UFLAA, §7373(a).
7 UFLAA §7373(b).
8 UFLAA §7374(a).
9 UFLAA §7374(b).
10 UFLAA §7385(d).
11 UFLAA §7392(1), (2).
12 UFLAA §7387.
13 UFLAA §7388.
14 UFLAA §7389(a).
15 UFLAA §7389(e).
16 UFLAA §7389(f).
17 *Miller v. Miller*, 620 A.2d 1161 (Pa. Super. 1993).
18 *Id.*
19 *Knorr v. Knorr*, 588 A.2d 503 (Pa. 1991).
20 UFLAA §7375(c)(1), (2).
21 UFLAA §7384(b).
22 UFLAA §7385(c).
23 UFLAA §7386(c)(1), (2).
24 UFLAA §7389(b)(1)-(3).
25 UFLAA §7389(d).
26 UFLAA §7389(c).
27 UFLAA §7382(b)(1), (2).
28 UFLAA §7382(b)(2).
29 UFLAA §7382(c).
30 UFLAA §7382(d).
31 UFLAA §7382(e).
32 UFLAA §7382(f).
33 UFLAA §7375(a).
34 UFLAA §7375(b).
35 UFLAA §7375(d).
36 UFLAA §7377(b).
37 UFLAA §7377(c).
38 UFLAA §7377(d).
39 UFLAA §7381(a), (b).
40 UFLAA §7380(a).
41 UFLAA §7380(b).
42 UFLAA §7383(a).
43 UFLAA §7383(b).
44 UFLAA §7383(c).
45 UFLAA §7383(c)(5), (12), (13).
46 UFLAA §7384(a).
47 UFLAA §7385(a).
48 UFLAA §7385(b).
49 UFLAA §7386(e).
50 UFLAA §7386(a).
51 UFLAA §7386(e).
52 UFLAA §7393(a).
53 UFLAA §7393(b).
54 UFLAA §7394.
55 UFLAA §7378(b).
56 UFLAA §7378(c).
57 UFLAA §7378(a).
58 UFLAA §7379(a).
59 UFLAA §7379(b).
60 UFLAA §7379(c).
61 UFLAA §7379(d).
62 UFLAA §7379(e).
63 UFLAA §7395(a), (b).
64 *Id.*
65 UFLAA §7395(c).
66 UFLAA §7395(d).
67 UFLAA §7395(e).
68 UFLAA §7395(d)(2).

Carolyn served as a Family Court Hearing Officer in the Court of Common Pleas of Chester County, Pennsylvania, where she presided over equitable distribution and custody matters, for eight years. She joined the firm of Momjian Anderer, LLC four years ago, where she practices family law, and acts as an arbitrator, mediator, and parenting coordinator. Carolyn authored the book, Family Law Arbitration: Practice, Procedure and Forms, published by the American Bar Association in August 2020. A link to this publication is found here: https://www.americanbar.org/products/inv/book/402949740/. She can be reached at czack@momjiananderer.com or 267-546-3712.

Robb D. Bunde is a founding shareholder of the Pittsburgh law firm of Bunde & Roberts, P.C. Robb concentrates his practice in family law. He is a fellow of the American Academy of Matrimonial Lawyers and has been certified by the AAML in Family Law Arbitration. He can be reached at rbunde@bunderoberts.com or (412)391-4330.

The Pennsylvania Psychologist

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Parenting Coordination in Custody Cases Returns to Pennsylvania

By: Jeannine Turgeon, Judge[1]

The Pennsylvania Supreme Court recently adopted Rule 1915.11-1 adopting, once again, Parenting Coordination, after having eliminated it several years ago. While many of us were concerned that the proposed new Rule would not include mental health professionals, fortunately it permits both masters or doctorate level mental health professionals to perform the essential and palliative role of a Parenting Coordinator in high conflict custody cases.

This article will outline several of the key components of the Rule and explain some of the components of the Rule in more detail.

The Pennsylvania Supreme Court established several specific educational and training requirements for Parenting Coordinators. Parenting Coordinators must obtain Twenty (20) hours of training prior to their initial appointment and Ten (10) hours of training every two years after the initial appointment.

Highlights of the new Rule 1915.11-1. Parenting Coordination

- Parenting Coordinators are appointed only in cases involving repeated or intractable conflict between the parties affecting implementation of the final custody order, after a final custody order entered.
- Parenting Coordinators may be appointed for up to 12 months, which can be extended.
- Parenting Coordinators must attempt to facilitate/mediate an agreement.
- If unable to reach agreement on the issues(s) then the Parenting Coordinator recommends a resolution to the Court, on a specific form.
- Parenting coordinators, with parties' consent, may contact collateral sources and speak with the child(ren).
- Parenting Coordinators may communicate with parties and their attorneys without the presence of the other party or their attorney, but the parties and their attorneys may not initiate communication with the Parenting Coordinator "ex parte" i.e. outside the opposing party's presence.
- No appointment of a Parenting Coordinator if parties have an active PFA Order or if court finds, a party has been the victim of domestic violence perpetrated by a party to the custody action, either during the pendency of the custody action or within 36 months preceding the filing of the custody action;--or victim of a personal injury crime perpetrated by a party to the custody action, unless the parties consent and appropriate safety measures implemented to protect the participants, parenting coordinator and other third parties.
- Parenting coordinators must issue their written Summary and Recommendations within 2 days after "hearing from the parties" on an issue.
- Parties cannot unilaterally terminate a Parenting Coordinator.
- Parenting Coordinator's Recommendation will be reviewed by a judge, and if parties file no objection within 5 days, the court will approve the recommendation in full or in part. The recommendation however becomes an interim order pending further court order.
- The Court can hold a hearing on issues not approved or remand the case to the Parenting Coordinator for more specific information.

Qualifications of Parenting Coordinators

To become a Parenting Coordinator in Pennsylvania, one must meet the following requisite qualifications as outlined in the new Rule:

- A Parenting Coordinator shall be licensed to practice in Pennsylvania as either an attorney or a mental health professional with a master's degree or higher;

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PARENTING COORDINATION IN CUSTODY CASES RETURNS TO PENNSYLVANIA!

Continued from page 1

- At a minimum, a Parenting Coordinator shall have practiced family law for five years or have five years of professional post-degree experience in psychiatry, psychology, counseling, family therapy, or other comparable behavioral or social science field; and
- A Parenting Coordinator shall have specialized training by a provider approved or certified by the American Psychological Association, Pennsylvania Psychological Association, American Bar Association, Pennsylvania Bar Association, Pennsylvania Bar Institute, or American Academy of Matrimonial Lawyers.

Education and Training Requirements for Parenting Coordinators

The Pennsylvania Supreme Court established several specific educational and training requirements for Parenting Coordinators. Parenting Coordinators must obtain Twenty (20) hours of training prior to their initial appointment and Ten (10) hours of training every two years after the initial appointment. Since the Rule does not take effect until March 2019, those interested in being a Parenting Coordinator placed on a Court of Common Pleas' list of approved Parenting Coordinators, have adequate time to obtain the required training.

The training shall include:

- Five hours in the parenting coordination process;
- Ten hours of family mediation;
- Five hours of training in domestic violence; and
- In each 2-year period after the initial appointment, ten continuing education credits on any topic related to parenting coordination with a minimum of two hours on domestic violence.

As stated above, this training must be approved or certified by the American Psychological Association, Pennsylvania Psychological Association, American Bar Association, Pennsylvania Bar Association, Pennsylvania Bar Institute, or American Academy of Matrimonial Lawyers.

Application to the Court for Placement on Roster of Approved Parenting Coordinator

A Judicial District implementing a Parenting Coordination program must maintain a roster of qualified individuals. If you want to be on the roster in one or more judicial districts (Courts of Common Pleas), you must submit an affidavit attesting you meet the qualifications to the president judge or administrative judge in those Judicial Districts. If approved, you must submit a new affidavit every two-year attesting that you continue to meet the qualifications.

Agreement with the Parties

According to the Rule, Parenting Coordinators must give the parties a copy of their signed Agreement regarding the Parenting Coordinator's qualifications, and information on the parenting coordination process and fees, discussed below. Therefore, it would be wise to include all the requisite training outlined above in addition to your educational background and other qualifications in your standard Agreement.

The Parenting Coordinator must give the parties a copy of their signed agreement regarding matters including the required retainer; hourly rate established by that judicial district; the process for invoices and payment for services; his or her qualifications, and information on the parenting coordination process. Since an agreement is required to contact collateral sources and speak with the children, your agreement should also include those points.

Authority of Parenting Coordinators

While under the prior Rule Parenting Coordinators could initially decide a variety of non-legal custodial issues, under the current Rule, Parenting Coordinators are only authorized to recommend resolutions to the court about issues that include:

- Places and conditions for custodial transitions between households;
- Temporary variation from the custodial schedule for a special event or circumstance;
- School issues, apart from school selection;
- The child(ren)'s participation in recreation, enrichment, and extracurricular activities, including travel;
- Child-care arrangements;
- Clothing, equipment, toys, and personal possessions of the child(ren);
- Information exchanges (e.g., school, health, social) between the parties and communication with or about the child(ren);
- Coordination of existing or court-ordered services for the child(ren) (e.g., psychological testing, alcohol or drug monitoring/testing, psychotherapy, anger management);
- Behavioral management of the child(ren); and
- Other custody issues that the parties agreed to submit to the parenting coordinator, (other than legal custody, primary physical custody and financial issues).

The Parenting Coordinator will issue their "Summary and Recommendation" on the specific form, as noted above, within two (2) days after hearing from the parties on the issues and serve a copy of the Recommendation on the parties. the parties have five (5) days after service to file with the Court their objection(s) to the Recommendation and request a hearing before the Court. The Court may approve the Parenting Coordinator's Recommendation, approve it in part and conduct a hearing on issues not approved, or remand it to the Parenting Coordinator for more specific information. If a party makes a timely objection, the Recommendation becomes an interim Order of Court, pending further Order of Court.

Parenting Coordinators' Fees

In accordance with standard practice, of course, the Rule requires the parties to sign a written fee agreement with the Parenting Coordinator concerning the retainer required, your hourly rate and that established by that judicial district, the process for invoices and payment for services, and other matters discussed above.

The Court Order Appointing Parenting Coordinators will provide how the parties will share the Parenting Coordinator's fees. However, the fees may be reallocated by the Court or Parenting Coordinators if a party

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PARENTING COORDINATION IN CUSTODY CASES RETURNS TO PENNSYLVANIA!

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has disproportionately caused the need for the services of Parenting Coordinators.

Courts implementing a parenting coordination program must also establish Parenting Coordinators' hourly fees. How each court determines these rates will likely vary from county to county considerably. I believe it is very important that all mental health professionals providing their services to custody litigants should immediately contact their local Family Law Bar Section to assist them and the courts on this challenging issue. Certainly, standard hourly rates differ depending upon the education and experience of each professional, whether a mental health provider or lawyer.

For low-income or in Forma Pauperis (IFP) parties, the Rule requires each court establish a "sliding fee scale" for those approved to serve as Parenting Coordinators. Some counties such as Allegheny and Lackawanna have programs that may serve as a model for the new fee schedule for Parenting Coordinators under the recent new rule.

As I understand it, Allegheny Family Court's Generation Program operates under a sliding fee scale for psychologists and mediators for IFP and low-income litigants to provide custody evaluations, psychological evaluations, and mediation. The county has contracts with those professionals. Some other counties also have similar contracts with mental health professionals. Most, however do not. Therefore, in accordance with standard practice, of course the rule requires the parties to sign a fee agreement with Parenting Coordinators concerning the retainer required, your hourly rate and that established by that Judicial District, the process for invoices and payment for services.

Conclusion

The entirety of the new Rules concerning Parenting Coordinators, including the form for Parenting Coordinators' recommendations, can be found at http://www.pacourts.us/assets/opinions/Supreme/out/Attachment%20%20103653532640942566.pdf?cb=1

1 The Honorable Jeannine Turgeon has served as a judge handling criminal, civil and family matters in the Court of Common Pleas of Dauphin County since 1992: In 2013, her goal of establishing a Family Court was realized and she assumed the role of managing a separate "division" of family law matters. She is the Vice-Chair of the Pa. Supreme Court Suggested Standard Civil Rules Committee and has served as Member and Chair of the Supreme Court Domestic Relations Rules Committee, The Pa. Statewide Parenting Coordination Task Force, The Pa. Sentencing Commission, and other Boards and Committees.

2 The Form required is as follows:
SUMMARY AND RECOMMENDATIONOF THE PARENTING COORDINATOR

The undersigned, the duly appointed parenting coordinator in the above-captioned matter, pursuant to the Order of Court dated _____, 20___, after submission of the issue described below and after providing the parties with an opportunity to heard on the issue, the parenting coordinator sets forth the following:

SUMMARY OF THE ISSUE(S)

1. Description of the issue(s):

_____

_____

2. The respective parties' position on the issue(s):

_____

_____

RECOMMENDATION-

_____

_____

Within five days of the date set forth below, a party may object to this recommendation by filing a petition with the court and requesting a record hearing before the judge as set forth in Pa.R.C.P. No. 1915.11-1(f)(3). The undersigned parenting coordinator certifies that this Summary and Recommendation of the Parenting Coordinator has been served on the court and the parties or the parties' attorneys on the date set forth below.

3 Ex parte" is a Latin phrase meaning "on one side only; by or for one party." An ex parte communication occurs when a party to a case, or someone involved with a party, talks or writes to or otherwise communicates directly with a Parenting Coordinator, Hearing Officer, Master or Judge about issues in a legal case without the other parties' presence or knowledge.

4 "Personal injury crime." is one that constitutes a misdemeanor or felony under any of the following, or criminal attempt, solicitation or conspiracy to commit criminal homicide, relating to assault, relating to kidnapping, human trafficking, sexual offenses, arson and related offenses, robbery, victim and witness intimidation, homicide by vehicle, and accidents involving death or personal injury.

5 The Rule provides as follows:
TERMINATION/WITHDRAWAL OF PARENTING COORDINATOR:

(a) The parties may not terminate the parenting coordinator's services without court approval.

(b) A party seeking the termination of the parenting coordinator's services shall serve the other party or the party's attorney and parenting coordinator with a copy of the petition for termination.
(c) If the parenting coordinator seeks to withdraw from service in a case, the parenting coordinator shall petition the court and provide a copy of the petition to the parties or the parties' attorneys.

6 The complete procedure under the Rule is, as follows: A party objecting to the recommendation shall file a petition for a record hearing before the court within five days of service of the Summary and Recommendation of the Parenting Coordinator form. The petition must specifically state the issues to be reviewed and include a demand for a record hearing. A copy of the recommendation shall be attached to the petition. In accordance with Pa.R.C.P. No.440, the objecting party shall serve the petition upon the other party or the party's attorney and the parenting coordinator.

7 In my opinion, parties may agree to appointment of an Arbitrator to co-ordinate parenting, instead of a Parenting Coordinator under this Rule, agreeing the Arbitrator will have the authority to make decisions on various parenting issues if an agreement cannot be reached by the parties on matters other than legal custody and changes regarding primary physical custody. That decision could be appealed to the Court; however, it at least provides a "decision" the parties must operate under pending hearing. See: What's in a Judge's Toolbox for Children in High-Conflict Families Without Parenting Coordinators? Co-authored with Hon. Katherine B.L. Platt, Pennsylvania Family Lawyer, 35 PA Family Lawyer Issue No. 3 (September 2013).

Sandra L. Meilton

Member

"We provide our clients quality representation in a passionate, understanding way. We care about them in more than a pure 'legal' sense." – ***SANDRA MEILTON***

BACKGROUND:

Sandy began her career as a high school teacher, although she had considered going to law school while attending college. However, a legal career always appealed to her. After moving to the Harrisburg area, Sandy held a position as a Medicare Hearing Examiner. But the desire to go to law school stayed with her. She finally took the plunge and applied to law school, realizing that a better understanding of the law could help in her work as a Medicare Hearing Examiner.

After graduating from law school, Sandy began working for a personal injury law firm. Eventually, she gravitated to family law and found it a natural fit for her skills and personality. During her first few years, Sandy worked with a wonderful mentor who instilled a love and respect for family law in Sandy that has stayed with her throughout her career.

EXPERIENCE

Sandy offers her clients over forty years' experience in family law. She is a trained Mediator and trained Parent Coordinator. She served as a Custody Conciliator Officer for Dauphin County from 1991 through April 2008 and now, upon request of the Court or individuals, will serve as a Guardian Ad Litem. Sandy is a frequent lecturer on family law matters throughout the Commonwealth of Pennsylvania.

PERSPECTIVE / PHILOSOPHY

Sandy believes that the law is a great profession for women, offering intellectual challenges, as well as the opportunity to work with great people. She loves helping people through the most troubling periods of their lives and bringing their issues to a solid resolution. Sandy also enjoys the many facets of family law that make it infinitely interesting. She sees these aspects as puzzle pieces that she must fit together – from taxes and small businesses to trusts and estate work, future planning and much more – all are aspects of many family law cases.

FUN FACTS ABOUT SANDY

Sandy loves to fly fish when time permits and finds the sport totally absorbing and relaxing. Sandy has been married over 50 years and enjoys traveling with her husband and time with friends.

PRACTICE AREAS

Family Law
Mediation
Parent Coordination

PROFESSIONAL & COMMUNITY AFFILIATIONS

- American Academy of Matrimonial Lawyers, Fellow Member, 1993-Present
- American Academy of Matrimonial Lawyers, Pennsylvania Chapter, Past President
- Supreme Court of Pennsylvania's Disciplinary Board Hearing Committee Member (Past)
- Pennsylvania Bar Association, Member
- Pennsylvania Bar Association's Review and Certifying Board, Member (Past)
- Dauphin County Bar Association, Member
- Dauphin County Bar Association, Past President
- Dauphin County Bar Association, Past Chair, Family Law Section
- Advisory Committee to Create the First Family Law Court in Dauphin County (Past)
- Cumberland County Bar Association, Member
- Pennsylvania Bar Foundation, Lifetime Member
- Dauphin County Bar Foundation, Lifetime Member; Past Board of Directors (Past)
- Dauphin County Seminar for Separating Parents Task Force, Chairperson (Past)
- Joint State Government Advisory Committee on Domestic Relations Law – Appointed
- Federal Judicial Advisory Board, Past Member
- American Trial Lawyers Association, Past Member
- Pennsylvania Trial Lawyers Association, Past Member; Past Board of Governors and Executive Committee
- Workers' Compensation Rules Committee, Past Member (Appointed by Pennsylvania Secretary of Labor and Industry)
- United Methodist Home for Children, Residential Care, Inc., Board of Directors (Past)
- Pennsylvania Bar Association Review and Certifying Board, Member

PROFESSIONAL RECOGNITIONS

- AV Martindale-Hubbell Peer Review Rating
  (Peers rank Sandy at highest level of professional excellence of legal ability in her area of practice, her expertise and other professional qualifications, as well as her adherence to professional standards of conduct and ethics, reliability, diligence and other criteria relevant in the performance of her professional responsibilities)

- Martindale-Hubbell Special Edition Judicial Award, 2016
- Assisted with the creation of Dauphin County's Family Court, 2014
- *Best Lawyers'* Harrisburg Family Law "LAWYER OF THE YEAR," 2014, 2017, 2019
- Best Lawyers in America, 2006-2011, 2013-2020
- Central Pennsylvania's Best Lawyers, 2009-2020
- Pennsylvania *Super Lawyers*, 2004-2020
- Top 50 Women Lawyers in Pennsylvania, featured in Philadelphia Magazine, 2004-2009
- *USA Today*/CNN's Lawyers of Distinction, 2016
- *Harrisburg Magazine's* Local Legal Leaders – Family Law, 2016
- *ALM's* Women Leaders in the Law, 2015
- *Susquehanna Style's* Select Lawyers – Family, Custody and Divorce Law, 2014-2015

SEMINARS & EVENTS

Sandy has lectured and authored over eighty seminars and events on domestic issues through the American Academy of Matrimonial Lawyers, Pennsylvania Bar Institute, Pennsylvania Bar Association, Pennsylvania Trial Lawyers Association, Dauphin County Bar Association, Cumberland County Bar Association, Widener University, Harrisburg Area Community College, Commonwealth of Pennsylvania and various non-profit organizations.

Some of her most recent seminars and events include:

- Co-Editor of Pennsylvania Bar Institute's "Custody Law Practice in Pennsylvania," 1st Edition (2013); 2nd Edition (2015.); 3rd Edition (2017)
- Mentor and Lecturer, American Academy of Matrimonial Lawyers' Institute for Family Law Associates, 2004 – 2010
- Co-course Planner and Lecturer, Pennsylvania Bar Institute's "Pitfalls of Family Law: Malpractice and/or Ethical Dilemma," 2007
- Co-Presenter with the Honorable Jeannine Turgeon at Nineteenth Children's Interagency Training Conference, "How Does Your Garden Grow? Cultivating Cross-System, Family-Driven and Youth-Guided Partnerships" on the topic of Ethical Consideration in Working with the Judicial System, 2007
- Faculty Member and Lecturer, Pennsylvania Bar Institute's "Family Law Institute" on "The View" Round Table Discussion on Custody From Custody Masters' Perspective, 2007
- Guest Lecturer, Family Law – Practice and Procedure Class of Widener University School of Law on the topics of custody conciliation and collaborative law
- Lecturer, American Academy of Matrimonial Lawyers' "Deal or No Deal" (Advanced Alimony Course), 2007
- Lecturer, Pennsylvania Bar Institute's "Primer on Family Law," 2006
- Co-course Planner and Lecturer, Pennsylvania Bar Institute's "Fundamentals of Family Law," 2006
- Author and Lecturer, Pennsylvania Bar Institute's Annual Family Law Update, 1997 – 2005

EDUCATION

J.D., Dickinson School of Law, Carlisle, Pennsylvania, 1980
B.A., Bethany College, Bethany, West Virginia, 1968

BAR ADMISSIONS

U.S. Supreme Court, 1984
Supreme Court of Pennsylvania, 1980
U.S. District Court, Middle District of Pennsylvania, 1980
U.S. Court of Appeals for the Third Circuit, 1985

_____, Plaintiff	:	IN THE COURT OF COMMON PLEAS DAUPHIN COUNTY, PENNSYLVANIA
v.	:	CIVIL ACTION - LAW
_____, Defendant	:	No. 20___ CV _____ CU IN CUSTODY

ORDER OF COURT

JUDICIAL REVIEW OF PARENTING COORDINATOR'S RECOMMENDATION

The Recommendation is approved.

The Recommendation is approved in part. The issue(s) not approved by the Court is/are:

_____

_____

and a record hearing is scheduled for _____. 20_____ at _____ a.m./p.m. before the undersigned.

The Recommendation is remanded to the parenting coordinator for additional information on the following issue(s): _____

_____

The Recommendation is not approved and a record hearing on the issue(s) is scheduled for _____. 20_____ at _____ a.m./p.m. before the undersigned.

BY THE COURT:

_____ _____

Date J.

Distribution:

_____, Plaintiff	:	IN THE COURT OF COMMON PLEAS DAUPHIN COUNTY, PENNSYLVANIA
v.	:	CIVIL ACTION - LAW
_____, Defendant	:	No. 20___ CV _____ CU IN CUSTODY

SUMMARY AND RECOMMENDATION OF THE PARENTING COORDINATOR

The undersigned, the duly appointed parenting coordinator in the above-captioned matter, pursuant to the Order of Court dated _____, 20_____, after submission of the issue described below and after providing the parties with an opportunity to be heard on the issue, the parenting coordinator sets forth the following:

SUMMARY OF THE ISSUE(S)

1. Description of the issue(s):

_____

_____

2. The respective parties' position on the issue(s):

_____

_____

_____

_____

RECOMMENDATION

_____

_____

Within five days of the date set forth below, a party may object to this recommendation by filing a petition with the Court and requesting a record hearing before the judge as set forth in Pa.R.C.P. No. 1915.11-1(f)(3).

The undersigned parenting coordinator certifies that this Summary and Recommendation of the Parenting Coordinator has been served on the Court and the parties or the parties' attorneys on the date set forth below.

Parenting Coordinator

Date

General Parenting Coordinator Guidelines

Role

I am not a counselor. While I will try to get parties to come to an agreement over an issue, my primary role is not that of a mediator. There will not be protracted discussion. My role is to hear your respective positions and make a decision.

Authority

Set out in Court Order. Additional information in the Supreme Court Rule.

Communication

Rules incident to communication are set out in Court order. Additional guidance is in the Supreme Court Rule. Specifics –

No telephone calls unless I initiate. All communications via email and must be copied to opposing party and both parties' attorneys.

Parties and Attorneys may communicate with me via email but all communications must be copied to the other party and both attorneys.

I may on occasion contact one party or the attorneys by telephone without including the other party and/or attorney. I will however advise the other party and/or the attorneys of the communication.

Procedure for addressing an issue

After in person initial conference with the parties (either in joint or individual session), unless otherwise directed, issues shall be handled via email. The party who wishes to have an issue addressed shall contact me by email. The email shall outline the issue and a suggested resolution. A copy of the email shall be forwarded to the opposing party and opposing counsel and to the party's own attorney.

Unless otherwise specified the nonrequesting party shall have 48 hours to respond to the request. Response shall be via email and shall set forth the party's position and suggested solution, if different from the requesting party. Opposing party and both attorneys shall be copied on the response.

If I require additional input, I will normally make that request for information via email.

Under some circumstances, I may ask for an inperson or a telephone conference. Either party or their attorneys may also request in inperson or telephone conference.

If either party objects to my recommendation, an appeal may be filed within 5 days of the date of service of my recommendation. The specifics regarding the appeal process are outlined in the Supreme Court Rule. (Copy provided.)

Signed by Judge McNally

PLAINTIFF

vs.

DEFENDANT

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

NO. 2018-CV-6071-CU

CIVIL ACTION
CUSTODY

RECEIVED
OFFICE OF
PROTHONOTARY
2019 APR 30 AM 10: 18
DAUPHIN COUNTY
PENNA

ORDER OF COURT

AND NOW, this 29th day of April, 2019, it is hereby ordered as follows:

A. APPOINTMENT AND TERM

1. Pursuant to Pa.R.C.P.No.1915.11-1 Sandra Meilton, Esquire is appointed as the parties' parenting coordinator for a term of 12 months (not exceeding 12 months).
2. Legal counsel for Mother shall provide copies of all orders, pleadings and custody evaluations in this case to the parenting coordinator within ten (10) days of the date of this order.

B. ROLE OF THE PARENTING COORDINATOR

3. The parenting coordinator shall attempt to resolve issues arising out of the custody order by facilitating an agreement between the parties and, if unable to reach an agreement, recommend a resolution to the court.
4. The parenting coordinator shall not function as the attorney, advocate, counselor, or psychotherapist for the parties, the parties' child(ren), or family. However, the parenting coordinator is permitted and encouraged to facilitate communication and agreement between the parties when conflicts arise and shall always act in a manner conducive to the best interests of the child(ren).

C. PARENTING COORDINATOR'S SCOPE OF AUTHORITY

5. To implement the custodial arrangement set forth in the custody order and resolve related parenting issues about which the parties cannot agree, the parenting coordinator is authorized to recommend resolutions to the court issues about that include, but are not limited to:
   (a) places and conditions for transitions between households;
   (b) temporary variation from the schedule for a special event or particular circumstance;
   (c) school issues, apart from school selection;
   (d) the child(ren)'s participation in recreation, enrichment and extracurricular activities, including travel;
   (e) child-care arrangements;
   (f) clothing, equipment, toys and personal possessions of the child(ren);

(g) information exchanges (e.g., school, health, social) and communication with or about the child(ren);

(h) coordination of existing or court-ordered services for the child(ren) (e.g., psychological testing, alcohol or drug monitoring/testing, psychotherapy, anger management);

(i) behavioral management of the child(ren); and

(j) other related custody issues that the parties mutually have agreed in writing to submit to the parenting coordinator, which are not excluded in section D.

D. EXCLUSIONS FROM PARENTING COORDINATOR'S AUTHORITY

6. The following specific issues are excluded from the parenting coordinator's scope of authority:

(a) a change in legal custody as set forth in the custody order;

(b) a change in primary physical custody set forth in the custody order;

(c) other than as set forth in section C(5b), a change in the court-ordered custody schedule that reduces or expands the child(ren)'s time with a party;

(d) a change in the residence (relocation) of the child(ren);

(e) determination of financial issues, other than allocation of the parenting coordinator's fees as set forth in Pa.R.C.P.1915.11-1(g)(1);

(f) major decisions affecting the health, education, or religion of the child(ren); and

7. Unless the parties' consent, the parenting coordinator shall not contact collateral sources or speak with the child(ren). The parties shall execute releases, as necessary, authorizing the parenting coordinator to communicate with the appropriate individuals. Any communication with the collateral sources or child(ren) shall be limited to the issue(s) currently before the parenting coordinator.

E. COMMUNICATIONS

8. The parenting coordinator shall determine the protocol of all communications, interviews and sessions, including who shall attend the sessions (including the children), and whether the sessions will be conducted in person or by other means. The protocols should include measures addressing the safety of all participants.

9. Communication between the parties or their attorneys and the parenting coordinator is not confidential.

10. The parties and their attorneys shall have the right to receive, but not initiate, oral *ex parte* communication with the parenting coordinator. The parenting coordinator shall promptly advise the other party or the other party's attorney of the communication. A party or a party's attorney may communicate in writing with the parenting coordinator but shall contemporaneously send a copy of the written communication to the other party or the other party's attorney. Documents, recordings or other material that one party gives to the parenting coordinator must be promptly made available to the other party or the other party's attorney for inspection and copying.

11. Communication between the parenting coordinator and the court shall be in writing and copies of the written communication shall be sent contemporaneously to the parties or the parties' attorneys.
12. A party cannot compel the testimony of a parenting coordinator without an order of court.

F. PARENTING COORDINATION PROCESS

13. The parenting coordinator shall provide to the parties notice and an opportunity to be heard on the issues.
14. The parenting coordinator's recommendation shall be in writing on the Summary and Recommendation of the Parenting Coordinator form set forth in Pa.R.C.P.No.1915.23 and sent to the court for review within two days after hearing from the parties on the issues. The parenting coordinator shall serve a copy of the Summary and Recommendation on the parties or the parties' attorneys.
15. A party objecting to the recommendation shall file a petition for a record hearing before the court within five days of service of the Summary and Recommendation of the Parenting Coordinator form. The petition must specifically state the issues to be reviewed and include a demand for a record hearing. A copy of the recommendation shall be attached to the petition. In accordance with PA.R.C.P. No.440, the objecting party shall serve the petition upon the other party or the party's attorney and the parenting coordinator.

G. RECORD HEARING

16. If the parties do not file an objection within five days of service of the parenting coordinator's recommendation the court shall:
    (a) approve the recommendation;
    (b) approve the recommendation in part and conduct a record hearing on issues not approved;
    (c) remand the recommendation to the parenting coordinator for more specific information; or
    (d) not approve the recommendation and conduct a record hearing on the issues.
17. As soon as practical, the court shall conduct a record hearing on the issues specifically set forth in the petition. The court shall render a decision within the time set forth in Pa.R.C.P. No.1915.4(d).
18. If a party makes a timely objection, the recommendation shall become an interim order of court pending further disposition by the court.

H. ALLOCATION OF FEES

19. The parties will share the obligation to pay the fees of the parenting coordinator as follows: % by Mother, % by Father. Fees may be reallocated by the court or the parenting coordinator if a party has disproportionately caused the need for the services of the parenting coordinator.
20. The judicial district's established hourly rate for parenting coordinators shall be set forth in a separate written agreement entered into between the parties and the parenting coordinator.
21. The parties will pay a joint retainer to the parenting coordinator in the percentages set forth above in an amount to be set forth in a separate agreement between the parties and the parenting coordinator. After

each session, or at least once monthly, the parenting coordinator shall provide the parties with an invoice of charges incurred. The retainer may be replenished as services are rendered. Funds remaining at the conclusion of the parenting coordinator's appointment shall be returned to the parties.

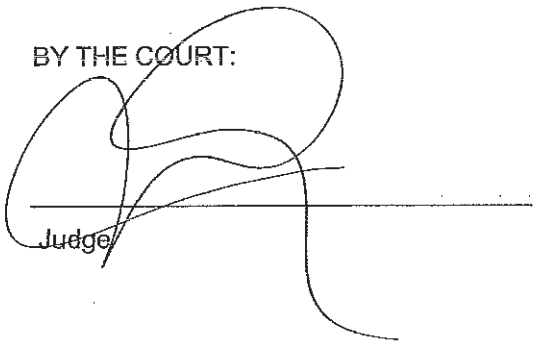
I. TERMINATION/WITHDRAWAL OF PARENTING COORDINATOR

22. The parties may not terminate the parenting coordinator's services without court approval.
23. A party seeking the termination of the parenting coordinator's services shall serve the other party or the party's attorney and parenting coordinator with a copy of the petition for termination.
24. If the parenting coordinator seeks to withdraw from service in a case, the parenting coordinator shall petition the court and provide a copy of the petition to the parties or the parties' attorneys.

J. APPEAL

25. If there is an appeal of the underlying custody order or this order, then this order shall be stayed during the pendency of the appeal.

BY THE COURT:



Judge

DISTRIBUTION:
Jennifer Lehman, Esquire

APR 30 2019

PA 17043

I hereby certify that the foregoing is a true and correct copy of the original filed.

Matthew R. Krupp
Prothonotary

THE COURTS

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989

[49 Pa.B. 918]
[Saturday, March 2, 2019]

Order

And Now, this 8th day of February, 2019, Dauphin County Local Rule of Civil Procedure 1915.11-1 is promulgated as follows:

Rule 1915.11-1. Parenting Coordination.

(a) *Appointment of a Parenting Coordinator.*

(1) If the parties agree on a Parenting Coordinator or if the Court deems one necessary, an order will be entered in accordance with Pa.R.Civ.P. 1915.22.

(2) If the parties cannot agree on the selection of a Parenting Coordinator, the Court shall require each party to identify their choice(s) along with hourly rates to all parties. If the parties cannot agree, the Court will select their Parenting Coordinator. The roster of the Court's approved Parenting Coordinators is posted at http://www.dauphincounty.org/government/courts/self_help_center/index.php.

(3) Any party seeking a reduced fee under section (g) below must file with the Prothonotary a Request for Reduced Parenting Coordinator Fee and the accompanying affidavit using the forms found at http://www.dauphincounty.org/government/courts/self_help_center/index.php within three (3) days of the appointment order absent good cause shown.

(b) *Roster of Approved Parenting Coordinators.*

An attorney or mental health professional seeking to be included on the Dauphin County Court's roster of qualified individuals to serve as a Parenting Coordinator shall submit a letter to the President Judge together with the following:

(1) An affidavit attesting the applicant has qualifications found in Pa.R.Civ.P. 1915.11-1;

(2) An acknowledgment the applicant will follow the Association of Family and Conciliation Courts (AFCC) Parenting Coordinator guidelines and has read the American Psychological Association (APA) Parenting Coordinator Guidelines; and

(3) An acknowledgment of responsibility to accept reduced fee or no fee assignments each year to equal twenty (20) hours a year, as needed. (Appointments for reduced or no fee assignments will be made on a rotating basis for all Parenting Coordinators on the Court's roster).

AFCC Parenting Coordinator guidelines are posted at https://www.afccnet.org/Portals/0/AFCCGuidelinesforParentingcoordinationnew.pdf and the APA Parenting Coordinator Guidelines are posted at https://www.apa.org/pubs/journals/features/parenting-coordination.pdf.

(f) *Parenting Coordinator Recommendations*

(2) A Parenting Coordinator shall file their Summary and Recommendations with the Prothonotary within two (2) days after the last communication with the parties on the issues in accordance with Pa.R.Civ.P. 1915.11-1(f)(2).

(3) *Objections to Parenting Coordinator's Recommendation(s) and Petition for a Record Hearing.*

a. A party objecting to the Recommendations must file with the Prothonotary an original and copy of their Objections and a Petition for a Record Hearing before the Court within five days of service of the Summary and Recommendations together with a Proof of Service upon all parties and the Parenting Coordinator.

b. The Prothonotary shall promptly forward the original Objections and Petition to the Court Administrator's Office for assignment to the parties' Family Court Judge to promptly schedule a record hearing. If the matter is an emergency or time-sensitive and the assigned Family Court Judge is not available, the matter will be assigned to the Emergency Custody Judge to conduct a record hearing.

(4) *Court Review of Parenting Coordinator's Recommendations.*

If no objections to the Parenting Coordinator's Recommendation are filed with the Prothonotary within five days of service of the Summary and Recommendation, the Prothonotary shall transmit the file to the Court Administrator's Office to be assigned to the parties' Family Court Judge or if none, to any Family Court Judge for review of the Recommendation in accordance with Pa.R.C.P. 1915.11-1(f)(4).

(g) *Fees*

Parties who request the appointment of a Parenting Coordinator or who are identified by the Court as benefiting from the appointment of a Parenting Coordinator shall pay the Parenting Coordinator as follows:

1. Up to $300.00 an hour;

2. Absent good cause, each party shall pay fifty (50) percent of the hourly fee which may be reallocated as deemed appropriate by the Parenting Coordinator or the Court. See Pa.R.C.P. 1915.22(8).

3. If a party's income is above 150% of the Federal Poverty Guidelines but below the Dauphin County median income for the most recent year, the Court will set the reduced fee

rate for that party. See Dauphin County median income: https://www.census.gov/quickfacts/fact/table/dauphincountypennsylvania/INC910216#INC910216. See Federal Poverty Guidelines: https://aspe.hhs.gov/poverty-guidelines.

The reduced fee scale is as follows:

Equal to or above median income	100% of allocated fee
1%—25% below median income	75% of allocated fee
26% below median income— above 150% of the Federal Poverty Guidelines	50% of allocated fee
Below 150% of the Federal Poverty Guidelines	$15 per hour
Below Federal Poverty Guidelines	$0 per hour

4. The Court may adjust a party's reduced fee based upon good cause.

Examples:

1. If the Dauphin County median annual income for one individual is $33,000 and the party's individual gross annual income is $38,000, the party must pay 100% of their allocated fee. If the Parenting Coordinator charged $200 per hour and both parties were to split the fee equally, this party would pay $100.00 an hour.

2. If the party's annual gross income is $9000, the party would pay $15.00 an hour since their gross income is below 150% of the Federal Poverty Guidelines.

3. If the party's gross annual income is $20,000 and the Dauphin County median annual income for one individual is $33,000, the party would pay 50% of their allocated fee. If the Parenting Coordinator charged $200 per hour and both parties were to split the fee equally, this party would pay $50.00 per hour (50% of the $100.00 allocated fee).

4. If the Parenting Coordinator's fee was allocated 75% for that parent, in the example above, the party, due to being 50% below the Dauphin County median income, would pay 50% of their allocated fee or $75.00 an hour. (75% of $200 = $150 an hour × 50% reduction = $75.00 an hour).

Rule of Civil Procedure 1915.11-1 shall be published in the *Pennsylvania Bulletin* and is effective on March 1, 2019.

By the Court

RICHARD A. LEWIS,
President Judge

[Pa.B. Doc. No. 19-287. Filed for public inspection March 1, 2019, 9:00 a.m.]

Close Window

Rule 1915.11-1. Parenting Coordination.

If a judicial district implements a parenting coordination program, the court shall maintain a roster of qualified individuals to serve as parenting coordinators and establish the hourly rate at which parenting coordinators shall be compensated. The parenting coordinator shall attempt to resolve issues arising out of the custody order by facilitating an agreement between the parties and, if unable to reach an agreement, recommend a resolution to the court.

(a) *Appointment of a Parenting Coordinator.*

(1) After a final custody order has been entered, a judge may appoint a parenting coordinator to resolve parenting issues in cases involving repeated or intractable conflict between the parties affecting implementation of the final custody order. A parenting coordinator should not be appointed in every case. The appointment may be made on the motion of a party or the court's motion.

(2) Unless the parties consent and appropriate safety measures are in place to protect the participants, including the parenting coordinator and other third parties, a parenting coordinator shall not be appointed if:

(i) the parties to the custody action have a protection from abuse order in effect;

(ii) the court makes a finding that a party has been the victim of domestic violence perpetrated by a party to the custody action, either during the pendency of the custody action or within 36 months preceding the filing of the custody action; or

(iii) the court makes a finding that a party to the custody action has been the victim of a personal injury crime, as defined in 23 Pa.C.S. § 3103, which was perpetrated by a party to the custody action.

(iv) If a party objects to the appointment of a parenting coordinator based on an allegation that the party has been the victim of domestic violence perpetrated by a party to the custody action, the court shall have a hearing on the issue and may consider abuse occurring beyond the 36 months provided in subdivision (a)(2)(ii).

(3) The appointment of a parenting coordinator shall be for a specified period, which shall not exceed 12 months. A party may petition the court for an extension of the appointment or the court in its discretion may extend the appointment for an additional period.

(4) If the parenting coordinator seeks to withdraw from service in a case, the parenting coordinator shall petition the court and provide a copy of the petition to the parties or the parties' attorneys.

(5) The parenting coordinator shall set forth in a separate written agreement with the parties:

(i) the amount of any retainer;

(ii) the hourly rate to be charged;

(iii) the process for invoices and payment for services;

(iv) information on the parenting coordination process; and

(v) provide a signed copy of the agreement to the parties before initiating any services.

Official Note

The parenting coordinator shall include in the parties' written agreement the hourly rate established by the judicial district.

(b) *Qualifications of the Parenting Coordinator.*

(1) A parenting coordinator shall be licensed to practice in the Commonwealth of Pennsylvania as either an attorney or a mental health professional with a master's degree or higher. At a minimum, the parenting coordinator shall have:

(i) practiced family law for five years or have five years of professional post-degree experience in psychiatry, psychology, counseling, family therapy, or other comparable behavioral or social science field; and

(ii) specialized training by a provider approved or certified by the American Psychological Association, Pennsylvania Psychological Association, American Bar Association, Pennsylvania Bar Association, Pennsylvania Bar Institute, or American Academy of Matrimonial Lawyers. The training shall include:

(A) five hours in the parenting coordination process;

(B) ten hours of family mediation;

(C) five hours of training in domestic violence; and

(D) in each two-year period after the initial appointment, ten continuing education credits on any topic related to parenting coordination with a minimum of two hours on domestic violence.

(2) An attorney or a mental health professional seeking an appointment as a parenting coordinator:

(i) shall sign an affidavit attesting that he or she has met the qualifications outlined in (b)(1);

(ii) shall submit the affidavit to the president judge or administrative judge of the judicial district where the parenting coordinator is seeking appointment; and

(iii) after submission of the initial affidavit, a parenting coordinator shall submit a new affidavit every two years attesting that he or she continues to meet the qualifications for a parenting coordinator outlined in (b)(1).

(c) *Appointment Order.* The parenting coordinator's authority as delineated in subdivision (d) shall be included in the order appointing the parenting coordinator, which shall be substantially in the form set forth in Pa.R.C.P. No. 1915.22.

(d) *Scope of Authority of the Parenting Coordinator.* The parenting coordinator shall have the authority to recommend resolutions to the court on issues related to the custody order if the parties are unable to reach an agreement.

(1) To implement the custody order and resolve related parenting issues about which the parties cannot agree, the parenting coordinator is authorized to recommend resolutions to the court about issues that include, but are not limited to:

(i) places and conditions for custodial transitions between households;

(ii) temporary variation from the custodial schedule for a special event or particular circumstance;

(iii) school issues, apart from school selection;

(iv) the child(ren)'s participation in recreation, enrichment, and extracurricular activities, including travel;

(v) child-care arrangements;

(vi) clothing, equipment, toys, and personal possessions of the child(ren);

(vii) information exchanges (e.g., school, health, social) between the parties and communication with or about the child(ren);

(viii) coordination of existing or court-ordered services for the child(ren) (e.g., psychological testing, alcohol or drug monitoring/testing, psychotherapy, anger management);

(ix) behavioral management of the child(ren); and

(x) other related custody issues that the parties mutually have agreed in writing to submit to the parenting coordinator, which are not excluded in subdivision (d)(2).

(2) The following issues are excluded from the parenting coordinator's scope of authority:

(i) a change in legal custody as set forth in the custody order;

(ii) a change in primary physical custody as set forth in the custody order;

(iii) except as set forth in subdivision (d)(1)(ii), a change in the court-ordered custody schedule that reduces or expands the child(ren)'s time with a party;

(iv) a change in the residence (relocation) of the child(ren);

(v) determination of financial issues, other than allocation of the parenting coordinator's fees as set forth in subdivision (g)(1);

(vi) major decisions affecting the health, education, or religion of the child(ren); and

(vii) other issues limited by the appointing judge.

(3) Unless the parties consent, the parenting coordinator shall not contact collateral sources or speak with the child(ren) and to effectuate this provision, the parties shall execute releases, as necessary, authorizing the parenting coordinator to communicate with the appropriate individuals. Any communication with the collateral sources or child (ren) shall be limited to the issue(s) currently before the parenting coordinator.

(e) *Communications. No Testimony.*

(1) Communication between the parties or the parties' attorneys and the parenting coordinator is not confidential.

(2) A party or a party's attorney may communicate in writing with the parenting coordinator, but shall contemporaneously send a copy of the written communication to the other party or the other party's attorney. Documents, recordings, or other material that one party gives to the parenting coordinator shall be promptly made available to the other party or the other party's attorney for inspection and copying.

(3) The parties and their attorneys may receive, but not initiate, oral *ex parte* communication with the parenting coordinator. A parenting coordinator may initiate oral communication with a party or party's attorney, but shall promptly advise the other party or the other party's attorney of the communication.

(4) Communication between the parenting coordinator and the court shall be in writing and copies of the written communication shall be sent contemporaneously to the parties or the parties' attorneys.

(5) A party cannot compel the testimony of a parenting coordinator without an order of court.

(f) *Recommendations. Objecting to the Recommendation. Judicial Review. Record Hearing.*

(1) The parenting coordinator shall provide to the parties notice and an opportunity to be heard on the issues.

(2) The parenting coordinator's recommendation shall be in writing on the Summary and Recommendation of the Parenting Coordinator form set forth in Pa.R.C.P. No. 1915.23 and sent to the court for review within two days after hearing from the parties on the issues. The parenting coordinator shall serve a copy of the Summary and Recommendation on the parties or the parties' attorneys.

(3) A party objecting to the recommendation shall file a petition for a record hearing before the court within five days of service of the Summary and Recommendation of the Parenting Coordinator form. The petition must specifically state the issues to be reviewed and include a demand for a record hearing. A copy of the recommendation shall be attached to the petition. In accordance with Pa.R.C.P. No. 440, the objecting party shall serve the petition on the other party or the other party's attorney and the parenting coordinator.

(4) If the parties do not file an objection within five days of service of the parenting coordinator's recommendation, the court shall:

(i) approve the recommendation;

(ii) approve the recommendation in part and conduct a record hearing on issues not approved;

(iii) remand the recommendation to the parenting coordinator for more specific information; or

(iv) not approve the recommendation and conduct a record hearing on the issues.

(5) As soon as practical, the court shall conduct a record hearing on the issues specifically set forth in the petition. The court shall render a decision within the time set forth in Pa.R.C.P. No. 1915.4(d).

(6) If a party makes a timely objection, the recommendation shall become an interim order of court pending further disposition by the court.

(g) *Fees.*

(1) The appointing judge shall allocate between the parties the fees of the parenting coordinator. The parenting coordinator may reallocate the fees, subject to the approval of the court, if one party has caused a disproportionate need for the services of the parenting coordinator.

(2) To limit the financial burden on the parties, a parenting coordinator should meet with the parties only upon a request of a party to resolve an issue about which the parties disagree.

(3) *Waiver of fees or reduced fees.* Judicial districts implementing a parenting coordination program shall effectuate a policy or program by local rule so that indigent or low-income parties may participate in the parenting coordination program at a reduced fee or no fee.

Source

The provisions of this Rule 1915.11-1 adopted April 23, 2013, effective in 30 days on May 23, 2013, 43 Pa.B. 2559; amended August 9, 2018, effective March 1, 2019, 48 Pa.B. 5346. Immediately preceding text appears at serial page (381082).

Top Bottom

Ann Levin | Levin Hoover Family Law

Ann has worked in family law for over 25 years, for judges and in private practice. After watching the destruction that can occur to a family during the divorce process, Ann became trained in collaborative law and mediation. She works with skill and compassion, realizing that legal matters involving family are one of the most stressful times in one's life.

Ann assists her clients move through the divorce process and is able to offer them alternatives to traditional litigation. Ann enjoys working with clients who desire to move beyond the divorce and who are willing to consider the needs of the entire family. She understands the concern people have for privacy, direct answers and a clear understanding of options regarding shared parenting, division of assets and sharing of income.

Ann has become a leader in the collaborative movement, serving a two-year term as co-president of the Collaborative Professionals of Central Pennsylvania. Thereafter, she continued to serve on the executive committee for two additional years, bringing ongoing training opportunities to like-minded professionals. Ann served two terms on the Practice Group Development Committee for the International Academy of Collaborative Professionals. Ann now focuses on spreading the practice of collaborative law throughout Pennsylvania as chair of the Pennsylvania Bar Association's Collaborative Law Committee.

Honors: Pennsylvania Super Lawyers: 2013- 2020 | Rising Star: 2005- 2007 | Select Lawyers: 2015 | Harrisburg Magazine Simply the Best or Reader's Choice Family Law Attorney: 2006-2013 | Current Chairperson: Pennsylvania Bar Association Collaborative Law Committee

Education: Widener University School of Law, J.D., 1993 | *Widener University Journal of Public Law* – Internal Editor - Publication: Comment, *I Speak therefore I Am: A Voice in Support of Judicial Candidates' Right to Freedom of Speech*, 2 Widener J. Pub. Law 671 (1993) | Seton Hall University, B.A. 1990, magna cum laude

Memberships: Pennsylvania Bar Association: Collaborative Law Committee, Family Law Section, Zone Member of House of Delegates, 2009-2012 | Dauphin County Bar Association: Board of Directors, 2002 & 2009, Member of Family Law Section, Chair of Family Law Section, 2002 & 2009 | Collaborative Professionals of Central Pennsylvania, Co-President, 2016 & 2017, Executive Committee, training 2018 & 2019 | International Academy of Collaborative Professionals: Practice Group Development Committee, 2018 & 2019 | Pennsylvania Council of Mediators | St. Thomas More Society: Board of Governors 2019 & 2020 | York County Bar Association: Member of Family Law Section | Herbert Cohen Inn of Court

Collaborative Law Process Anchors for Clients

1. **Recognize the futility of arguing.**

   Characteristics of the clients that are ignored in conflict:

   Perspectives
   Interests
   Beliefs

   Identify your perspectives, interests, and beliefs and listen for what you can learn about how to negotiate to the other person's perspectives, interests and beliefs.

2. **Recognize your own process needs and respect those process needs of the other.**

   A client needs to go through their own determination of needs and concerns, development of the issues and evaluation of options. The more prepared to negotiate each client is, the more successful the agreement will be for each. Be mindful of conduct that interferes with the process needs of the other person. Make it safe for the other person to say what needs to be said.

3. **Speak only for yourself. Use "I" statements.**

   Listen for the tendency to include reference to the other person in your language. Reframe speech to exclude references to what the other person thinks, feels, wants or needs.

4. **Avoid language about the other person that is critical, judgmental, accusatory, blame-oriented, sarcastic or inflammatory.**

   To understand the value in this principle, ask yourself how well you respond to this type of language.

5. **Commit to the fullest development of choices and alternatives.**

   This will dovetail into anchor #2. The widest range of all possible choices will only be developed by each client having the ability to express all concerns,

interests, perspectives and goals. Remember that your self-interest is served by contributing to the creation of the widest range of choices.

6. Just say "No".

The Collaborative Law Process is entirely voluntary and no amount of legal force will be used to create an outcome over the objection of either person. Each client is empowered to control the outcome by having the right to say "no" to anything that is not acceptable.

7. Be effective.

Can you think of any better word to characterize your conduct in the Collaborative Process than "**effective**"? Measure the value of anything you do by asking whether it is effective in advancing you to your desired goals or objectives. Emotions may compel you to show your anger, hurt, pain, distrust, or contempt for the other person. Be mindful of how effective such conduct will be in achieving your goals.

8. Be empowering. Take responsibility for your feelings, your concerns and your choices.

Holding another person responsible for how you feel, what you need and what you choose, serves only to make you dependent on that other person. By taking responsibility for your own feelings, your needs and your choices, you take control over your life.

NEGOTIATING MODEL FOR COLLABORATIVE LAW

The model for negotiation of a resolution of issues in a collaborative law case differs from the type of negotiation used in litigation or other methods of issue resolution. In your case, we will follow certain steps as outlined below to craft a resolution of all issues that is agreeable to both parties and meets the needs of both parties to the greatest possible extent.

1. Information Gathering

The first step of the process is to gather information from both parties relating to the issues they hope to resolve. The type of information will depend on the type of issues identified. All information will be freely provided and shared, and all questions that a party may have will be addressed. Examples would include information about marital assets and liabilities and about the incomes of the parties.

2. Identifying Concerns and Needs

The heart of the collaborative process is interest-based negotiation. The parties are encouraged to identify any needs or concerns that they have and which they wish to address during the process. Needs or concerns are different than goals. For example, a party might express a desire to keep the marital residence or to have primary custody of children. Those are actually possible solutions to address such concerns as maintaining a stable residence for the party or the children or how the children's physical and emotional needs will be met. In this step of the process, the focus will simply be on identification of the interests that both parties have, without trying to solve those issues at that time. To be effective, the parties must try to be specific and concrete about their concerns. Each party must also work hard to understand and appreciate the needs being expressed by the other, without being judgmental. It is most productive to look forward to identify where the parties want to be at the end of the process, rather than to look backward with a focus on blame for what has happened in the past.

Obviously, the parties will identify long-term concerns, such as how parenting responsibilities are to be shared, how assets are to be divided, or how the future cash flow needs of both households are to be met. Some needs or concerns may be more immediate, generating a discussion about possible interim solutions to these issues to stabilize the situation or to provide some temporary resolution. Such interim agreements then allow the parties to address more long-term concerns and solutions in a more deliberate fashion.

3. Discussing Options

Once the parties have fully identified their needs and concerns in specific and concrete terms, they will begin to suggest possible solutions to these issues. Parties are asked to remember that there is usually more than one possible solution to a problem, and the goal of this part of the collaborative process is to be very creative in identifying many possible alternative solutions. The advantage of the collaborative process is that the parties can create any number of options that might not even be possible or likely in a court of law in a traditional litigation case. No one is committed to any particular solution until there is a final agreement on all issues. Think of this part of the process as similar to shopping for a new car - you will want to "test-drive" several before making your final choice. This frees the parties to consider all available options without fear of weakening their bargaining position, as in more traditional litigation. It is most effective to stay focused on the problem, not the person on the other side. While each party is expected to negotiate strongly to meet his or her own needs, avoiding personal attacks or recriminations will make the other side much more receptive to your concerns and more willing to consider options you may propose.

While each party is responsible for identifying various options that would meet their own needs and concerns, they must remain open to consideration of options suggested by the other party. Similarly, each party is free to suggest various possible options to meet the needs identified by the other party. That is the essence of the collaborative process - having both parties and their attorneys working together on addressing the needs of both parties, rather than just focusing on one side's issues. A successful collaboration will result in mutually advantageous solutions.

After the parties have put on the table all of the possible options to address a particular issue that they can think of, the parties and their attorneys examine each option to test how well it does meet the need identified and whether there are any disadvantages to one or both parties. The goal is to identify the best of the suggested options, the one that will most successfully meet the need or concern being addressed but that is also acceptable to the other party.

4. Resolution

Once the parties have identified the best options for the resolution of individual issues and concerns, all participants try to craft a comprehensive settlement of all of the issues involved in their case. As in most negotiations, this will likely involve some give and take by the parties. A party may be willing to accept a solution to a particular issue that is not what they consider to be the best alternative, in order to obtain the other party's agreement to accept their preferred option on another issue of greater importance to them. The successful outcome is a complete settlement of all issues that seems fair and satisfactory to both parties, although perhaps for different reasons.

EFFECTIVE COMMUNICATION TECHNIQUES

1. Attack the problem and concerns at hand. Do not attack each other.

2. Avoid positions; rather express yourself in terms of needs and interests and the outcomes you would like to realize.

3. Work for what you believe is the most constructive and acceptable agreement for both of you and you family.

4. During the 4-way meetings with your lawyer (both lawyers and both clients are present), remember the following:

    a) Do not interrupt when the other client or their lawyer is speaking. You will have a full and equal opportunity to speak on every issue presented for discussion.

    b) Do not use language that blames or finds fault with the other. Use non-inflammatory words. Be respectful of others.

    c) Speak for yourself; make "I" statements. Use each other's first name and avoid "he" or "she".

    d) If you share a complaint, raise it as your concern and follow it up with a constructive suggestion as to how it might be resolved.

    e) If something is not working for you, please tell your lawyer so your concern can be addressed.

    f) Listen carefully and try to understand what the other is saying without being judgmental about the person or the message.

    g) Talk with your lawyer about anything you do not understand. Your lawyer can clarify issues for you.

5. Be willing to commit the time required to meet regularly. Be prepared for each meeting.

6. Be patient - delays in the process can happen with everyone acting in good faith.

CHAPTER 74
COLLABORATIVE LAW PROCESS

Sec.

Enactment. Chapter 74 was added June 28, 2018, P.L.381, No.55, effective in 60 days.

Applicability. See section 1 of Act 55 of 2018 in the appendix to this title for special provisions relating to findings and declarations.

§ 7401. Short title and scope of chapter.

(a) Short title.--This chapter shall be known and may be cited as the Collaborative Law Act.

(b) Scope.--This chapter shall apply to a collaborative law process between family members and arising from a participation agreement that meets the requirements of section 7405 (relating to collaborative law participation agreement).

§ 7402. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Collaborative communication." A statement or question that concerns the collaborative law process or a collaborative matter and that occurs after the parties sign a collaborative law participation agreement but before the collaborative law process is concluded. The term does not include a written settlement agreement that is signed by all parties to the agreement.

"Collaborative law process." A procedure to resolve a claim, transaction, dispute or issue without intervention by a tribunal, in which procedure all parties sign a collaborative law participation agreement, all parties are represented by counsel and counsel is disqualified from representing the parties in a proceeding before a tribunal.

"Collaborative matter." A dispute, transaction, claim or issue for resolution that is described in a participation agreement concerning any of the following:

(1) Marriage, divorce and annulment.
(2) Property distribution, usage and ownership.
(3) Child custody, visitation and parenting time.
(4) Parentage.
(5) Alimony, alimony pendente lite, spousal support and child support.
(6) Prenuptial, marital and postnuptial agreements.
(7) Adoption.
(8) Termination of parental rights.
(9) A matter arising under 20 Pa.C.S. (relating to decedents, estates and fiduciaries).
(10) A matter arising under 15 Pa.C.S. Pt. II (relating to corporations).

"Family members." All of the following:

(1) Spouses and former spouses.
(2) Parents and children, including individuals acting in loco parentis.
(3) Individuals currently or formerly cohabiting.
(4) Other individuals related by consanguinity or affinity.

"Nonparty participant." A person other than a party or a party's attorney that participates in the collaborative law

process. The term may include, but is not limited to, support persons, mental health professionals, financial neutrals and potential parties.

"Party." A person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

"Person." An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

"Proceeding." A judicial, administrative, arbitral or other adjudicative process before a tribunal.

"Related matter." A matter involving the same parties, dispute, transaction, claim or issue as a collaborative matter.

"Tribunal." A court, arbitrator, administrative agency or other body acting in an adjudicative capacity that has jurisdiction to render a binding decision directly affecting a party's interests in a matter.

§ 7403. Beginning the collaborative law process.

(a) Voluntariness.--Participation in a collaborative law process is voluntary and may not be compelled by a tribunal. A party may terminate the collaborative law process at any time with or without cause.

(b) Commencement.--A collaborative law process shall begin when the parties sign a collaborative law participation agreement. Parties to a proceeding pending before a tribunal may enter into a collaborative law process to resolve a matter related to the proceeding.

Cross References. Section 7403 is referred to in section 7405 of this title.

§ 7404. Assessment and review.

(a) General assessment.--Before entering into a collaborative law participation agreement, a prospective party shall:

(1) Assess factors the prospective party's attorney reasonably believes relate to whether the collaborative law process is appropriate for the matter and for the parties, including a prospective party or nonparty participant's history, if any, of violent or threatening behavior.

(2) Review information that the attorney reasonably believes is sufficient for the prospective party to make an informed decision about the material benefits and risks of a collaborative law process, as compared with other alternatives.

(b) Threatening or violent behavior.--

(1) Before a prospective party signs a collaborative law participation agreement, an attorney shall inquire whether the prospective party has a history of threatening or violent behavior toward any party or nonparty participant who will be part of the collaborative law process.

(2) If an attorney learns or reasonably believes, before commencing or at any point in the collaborative law process, that a party or prospective party has engaged in or has a history of threatening or violent behavior toward any other party or nonparty participant, the attorney may not begin or continue the collaborative law process unless the party or prospective party:

(i) Requests beginning or continuing the collaborative law process.

(ii) Indicates that the safety of all parties to the collaborative law process can be protected adequately during the collaborative law process.

(c) Private cause of action.--An attorney's failure to protect a party under this section shall not give rise to a private cause of action against the attorney.

§ 7405. Collaborative law participation agreement.

(a) Requirements.--A collaborative law participation agreement must:

(1) Be in writing.

(2) Be signed by the parties.

(3) State the parties' intention to resolve a collaborative matter through a collaborative law process.

(4) Describe the nature and scope of the collaborative matter.

(5) Identify the attorney who represents each party in the collaborative law process.

(6) Include a statement that the representation of each attorney is limited to the collaborative law process and that the attorneys are disqualified from representing any party or nonparty participant in a proceeding related to a collaborative matter, consistent with this chapter.

(b) Optional provisions.--Parties may include in a collaborative law participation agreement additional provisions not inconsistent with this chapter or other applicable law, including, but not limited to:

(1) An agreement concerning confidentiality of collaborative communications.

(2) An agreement that part or all of the collaborative law process will not be privileged in a proceeding.

(3) The scope of voluntary disclosure.

(4) The role of nonparty participants.

(5) The retention and role of nonparty experts.

(6) The manner and duration of a collaborative law process under sections 7403 (relating to beginning the collaborative law process) and 7406 (relating to concluding the collaborative law process).

(c) Nonconforming agreements.--This chapter shall apply to an agreement that does not meet the requirements of subsection (a) if:

(1) The agreement indicates an intent to enter into a collaborative law participation agreement.

(2) The agreement is signed by all parties.

(3) A tribunal determines that the parties intended to and reasonably believed that they were entering into a collaborative law agreement subject to the requirements of this chapter.

Cross References. Section 7405 is referred to in section 7401 of this title.

§ 7406. Concluding the collaborative law process.

(a) General rule.--A collaborative law process shall be concluded by:

(1) Resolution of the collaborative matter, as evidenced by a signed record.

(2) Resolution of a part of the collaborative matter and agreement by all parties that the remaining parts of the collaborative matter will not be resolved in the collaborative law process, as evidenced by a signed record.

(3) Termination under subsection (b).

(4) A method specified in the collaborative law participation agreement.

(b) Termination.--A collaborative law process shall be terminated when:

(1) A party gives written notice to all parties that the collaborative law process is terminated.

(2) A party begins or resumes a pending proceeding before a tribunal related to a collaborative matter without the agreement of all parties.

(3) Except as provided in subsection (c), a party discharges the party's attorney or the attorney withdraws from further representation of a party. An attorney who is discharged or withdraws shall give prompt written notice to all parties and nonparty participants.

(c) Continuation.--Notwithstanding the discharge or withdrawal of a collaborative attorney, a collaborative law process shall continue if, not later than 30 days after the date that the notice under subsection (b)(3) is sent, the unrepresented party engages a successor attorney and the participation agreement is amended to identify the successor attorney.

Cross References. Section 7406 is referred to in section 7405 of this title.

§ 7407. Disqualification of collaborative attorney.

(a) Rule.--

(1) Except as provided in subsection (b), an attorney who represents a party in a collaborative law process and any law firm or government agency with which the attorney is associated shall be disqualified from representing any party or nonparty participant in a proceeding related to the collaborative matter.

(2) Requesting the approval of a settlement agreement by a tribunal shall be considered part of the collaborative law process and not a related proceeding.

(b) Exception.--Disqualification under subsection (a) shall not operate to prevent a collaborative attorney from seeking or defending an emergency order to protect the health, safety or welfare of a party or a family member.

§ 7408. Disclosure of information.

During the collaborative law process, parties shall provide timely, full, candid and informal disclosure of information related to the collaborative matter without formal discovery, and shall update promptly previously disclosed information that has materially changed.

§ 7409. Confidentiality.

A collaborative law communication shall be confidential to the extent provided by the laws of this Commonwealth or as specified in the collaborative law participation agreement.

§ 7410. Privilege.

(a) General rule.--Except as otherwise provided in this section, a collaborative communication is privileged, may not be compelled through discovery and shall not be admissible as evidence in an action or proceeding. Evidence that is otherwise admissible and subject to discovery shall not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

(b) Waiver.--

(1) A party may waive a privilege belonging to the party only if all parties waive the privilege and, in the case of a communication by a nonparty participant, only if the nonparty participant and all parties waive the privilege.

(2) If a party discloses a privileged collaborative communication that prejudices another party, the disclosing party waives the right to assert a privilege under this section to the extent necessary for the party prejudiced to respond to the disclosure or representation.

(c) Nonapplicability.--Privilege under subsection (a) shall not apply to:

(1) A communication that is not subject to the privilege by agreement of the parties according to the terms of a participation agreement.

(2) A communication that is made during a session of a collaborative law process that is open, or required by law to be open, to the public.

(3) A communication sought, obtained or used to:

(i) threaten or plan to inflict bodily injury, commit or attempt to commit a crime; or

(ii) conceal ongoing criminal activity.

(d) Exceptions.--The following exceptions apply to the privilege under subsection (a):

(1) A communication sought or offered to prove or disprove facts relating to a claim or complaint of professional misconduct or malpractice or a fee dispute.

(2) A communication sought or offered to prove facts relating to the abuse, neglect, abandonment or exploitation of a child or abuse of an adult.

(3) A communication sought or offered in a criminal proceeding or in an action to enforce, void, set aside or modify a settlement agreement where a tribunal or court of competent jurisdiction finds that the evidence is not otherwise available and the need for the evidence substantially outweighs the interest in protecting the privilege.

(e) Limitation.--

(1) If a collaborative communication is subject to an exception under subsection (d), only the part of the collaborative communication necessary for the application of the exception may be disclosed or admitted.

(2) Disclosure or admission of evidence under subsection (d) does not make the evidence or any other collaborative communication discoverable or admissible for any other purpose.

(f) Construction.--This section shall not be construed to affect the scope of another applicable privilege under State law or rule of court.

§ 7411. Professional responsibility.

This chapter shall not affect the professional responsibility obligations and standards applicable to an attorney or other person professionally licensed or certified under State law.