

ALTERNATIVE DISPUTE RESOLUTION

POLICY AND PROCEDURE MANUAL

PURPOSE OF MANUAL

This manual is to set out the qualification and training requirements of Alternate Dispute Resolution providers; to establish rules that ensure the impartiality of the neutral; to provide the method of compensation of the neutral; and the method of scheduling disputes referred to the program.

The training requirements set out by this circuit shall not be less than required by Supreme Court Rule 17 or Rule 88 and these policies and procedures shall not be in conflict with Supreme Court Rule 17 or Rule 88.

The policy and procedures shall be reviewed, at a minimum, every three years by the Family Court Administrative Judge to determine if changes are necessary. The Policy and Procedures may be amended at any time with at least twenty days public notice, public posting of the proposed changes and an opportunity for public input.

STATUTORY AUTHORITY

The following Supreme Court Rules and Local Rule provide for the establishment of an Alternative Dispute Resolution Program.

Supreme Court Rule 17.01 – Alternative Dispute Resolution Program – Establishment–Purpose-Definition

- (a) Any judge by order or any judicial circuit by local court rule may establish an alternative dispute resolution program as provided in this Rule 17. It is the purpose of the Court through adoption and implementation of this Rule 17 to provide an alternative mechanism for the resolution of civil disputes, except those subject to Supreme Court Rules 88.02 to 88.08, by means of alternative dispute resolution procedures for disposition before trial of certain civil cases with resultant savings in time and expenses to the litigants and to the court without sacrificing the quality of justice to be rendered or the right of the litigants to jury trial in the event that a settlement satisfactory to the parties is not achieved through alternative dispute resolution.

Supreme Court Rule 17.03 – Referral, Notification and Appointment

- (a) A civil action shall be ordered to alternative dispute resolution upon stipulation of the parties. A civil action may be ordered to dispute resolution upon the motion of any party or by the court. Absent the parties agreeing to an

alternative dispute resolution process, the court shall determine the most appropriate process.

- (b) If counsel for any party, after conferring with their respective clients, all other attorneys, and unrepresented parties, conclude that referral to alternative dispute resolution has no reasonable chance of being productive, they may opt out by so advising the court, in writing, within thirty days of the order of referral. The matter shall not thereafter be referred by the court to alternative dispute resolution absent compelling circumstances, which shall be set out by the court in any order referring the matter to alternative dispute resolution.
- (c) If the parties agree to participate in the alternative dispute resolution program but cannot agree upon the neutral, then the court shall select a neutral from individuals or organizations qualified under Rule 17.04.
- (d) Nothing contained in the Rule 17 shall preclude the parties from agreeing:
 - (1) To participate in any alternative dispute resolution program independent of this Rule 17;
 - (2) On different neutrals than that selected by the court either before or after the entry of an order entered pursuant to this Rule 17;
 - (3) On a neutral not otherwise identified on any court maintained list.
- (e) Each circuit shall adopt necessary local court rules assuring the impartiality of the neutral, allowing for the removal or withdrawal of the neutral, and providing for the method of, but not the rate of, compensation of all neutrals.
- (f) Each circuit shall adopt such local court rules as shall be appropriate for the scheduling of disputes referred to the program.

88.02. Mediation Authorized

Any judicial circuit may elect to establish a mediation program for child custody and visitation disputes as provided in the Rule 88.

(Adopted Dec. 27, 1990, eff. July 1, 1991.)

Local Rule 2.3D

On February 14, 2007, the 31st Judicial Circuit Court En Banc adopted an Alternative Dispute Resolution Program through Local Rule 2.3D. Pursuant to Supreme Court Rules 17 and 88.02 through 88.08, this local rule provides that parties involved in contested Dissolution of Marriages, Modifications, and Paternity cases are required to attend two hours of alternative dispute resolution, unless waived by the Court for good cause shown.

REFERRAL TO ALTERNATIVE DISPUTE RESOLUTION PROGRAM

Local Rule 2.3D requires attendance of an education class called “Dispute Resolution and The Family Court” and attendance to an alternative dispute resolution (ADR) process.

Referrals to the “Dispute Resolution and The Family Court” class will emanate from the Case Flow Management process and will be accepted from the Greene County Family Court and the Domestic Relations Unit. The Mediation Coordinator will schedule both parties for attendance to the class prior to the parties’ participation in Case Management Hearings/Conferences. The class curriculum shall provide information on other processes that are available which may meet the needs of the parties, giving considerations of how much time, effort and experience may be needed to resolve their dispute. The class will satisfy the notice requirement of Supreme Court Rule 17.02. (*See Appendix B.*)

During the Case Management process, and after both parties have attended the “Dispute Resolution and The Family Court” class, the Court will order the parties to the appropriate dispute resolution process. If the parties did not specify a neutral during the Case Management Hearing/Conference, the Mediation Coordinator will assign a neutral and notify each party of that selection as well as the day and time of the scheduled ADR conference.

CONFIDENTIALITY AND SETTLEMENT

Pursuant to Rule 88.08, the mediation proceeding will be private, confidential and regarded as settlement. The neutral, or any agent or employee of that neutral shall not be subpoenaed or otherwise compelled to disclose information gathered in the mediation process.

A written summary of any understanding reached by the parties will be provided by the neutral to the parties and their attorneys, if any. This summary will be in the form of a Memorandum of Understanding. If any party is not represented, the mediator shall provide to the court the written summary of any understanding reached by the parties. This agreement shall be not be binding unless the parties agree and the court approves said agreement.

All other ADR processes shall be in compliance with Rule 17.06 relating to confidentiality and settlement.

In all ADR processes including mediation, the neutral shall, within ten working days following the ADR conference, provide the court with an ADR Compliance Report and, if the ADR process is mediation, provide the Mediation Coordinator with a Mediator’s Report. The Mediator’s Report and the ADR compliance report

will provide information regarding attendance of the parties, and whether the dispute was resolved and/or whether any issues remain unresolved.

QUALIFICATIONS FOR ADR NEUTRALS

The qualifications and educational requirements for practitioners of each of the ADR processes approved in this Circuit are included with the definitions and descriptions of each method in the section titled "ALTERNATIVE DISPUTE RESOLUTION METHODS." Neutrals shall be trained and educated in accordance with Supreme Court Rules 17.04 and 88.05.

DISQUALIFICATION AND WITHDRAWAL OF NEUTRALS

No person shall serve as neutral in any action in which the neutral has a personal interest in or is prejudiced, or is related to either party, or has given counsel to a party. No person shall serve as neutral in any action under any other circumstances, which reasonably call into question the neutral's impartiality. A neutral may withdraw for any reason set forth in this policy or for any other reason. If a party to an action believes in good faith that a neutral should be removed and the neutral refuses to remove him or herself, the party may file a motion with the court asking for the removal of the neutral.

Pursuant to Supreme Court Rule 88.07, neutrals may terminate any ADR process if the neutral believes that continuing the process may be harmful to either party, or if one or more of the parties is not willing or does not have the ability to participate meaningfully in reaching a reasonable agreement.

Should ethical issues arise regarding the neutral, that professional's licensing board should be contacted. The grieving party shall proceed with that process.

LIST OF ADR NEUTRALS

The Mediation Coordinator shall compile and maintain a list of neutrals qualified for the ADR processes approved by this circuit. This list shall be made available to counsel, parties and the public and shall include the neutral's training, experience, qualifications, and other information deemed appropriate. Neutrals shall be trained as provided in Supreme Court Rule 17.04 and this Policy and Procedures manual and shall advise the Mediation Coordinator of any changes regarding their listing. The Court may remove any name from the list in its sole discretion.

COMPENSATION

The mediator, arbitrator or other neutral shall receive such compensation as the parties and the person selected agree. The fee, unless otherwise agreed by the parties, shall be borne equally by the parties, and shall be paid directly to the person selected. The Court shall have the right to review the reasonableness of the fee charged by the neutral.

ALTERNATIVE DISPUTE RESOLUTION METHODS

Early Neutral Evaluation

A process designed to bring parties of civil litigation and their counsel together in the early pre-trial period before the court and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process.

Neutral Qualifications – Pursuant to Supreme Court Rule 17.04, an individual who performs as Neutral for Early Neutral Evaluations shall be an attorney or a person who possesses a graduate degree in a field that includes the study of psychiatry, psychology, social work, counseling or other behavioral science substantially related to marriage and family interpersonal relationships; and has received a minimum of forty hours of civil and family mediator training. The Neutral shall have observed, evaluated and/or co-evaluated four domestic relations evaluations with at least two evaluators.

Mediation

A non-binding process involving a neutral mediator who acts as a facilitator to assist the parties to craft a mutually acceptable resolution in accordance with Supreme Court Rule 17.01 or Rule 88. (*See Appendices B and C.*)

Neutral Qualifications – Pursuant to Supreme Court Rule 17.04 and Rule 88, an individual who performs as Neutral for Mediations shall be an attorney or a person who possesses a graduate degree in a field that includes the study of psychiatry, psychology, social work, counseling or other behavioral science substantially related to marriage and family interpersonal relationships; and has received a minimum of forty hours of civil and family mediator training. The Neutral shall have observed, mediated and/or co-mediated four domestic relations mediations with at least two mediators. In lieu of that requirement, the

observations may be comprised of four mediations or co-mediations conducted prior to the Neutral's inclusion on the updated court's list of Mediators, or if while representing a client, the attorney participated in four attorney assisted Mediations. The Neutral shall comply with the requirements set out in Supreme Court Rule 88.05. (See Appendix C.)

Arbitration

An adjudicative process by which a neutral person or persons decide the rights and obligation of the parties. It may be consensual, mandatory, non-binding, or binding, in accordance with Supreme Court Rule 17.01.

Neutral Qualifications - Pursuant to Supreme Court Rule 17.04, an individual who performs as Neutral for Arbitration shall be an attorney or a person who possesses a graduate degree in a field that includes the study of psychiatry, psychology, social work, counseling or other behavioral science substantially related to marriage and family interpersonal relationships; and has received a minimum of forty hours of civil and family mediator training. The Neutral shall have observed, arbitrated and/or co-arbitrated four domestic relations arbitrations with at least two arbitrators. In lieu of that requirement, the observations may be comprised of four arbitrations or co-arbitrations conducted prior to the Neutral's inclusion on the updated court's list of Arbitrators, or if while representing a client, the attorney participated in four attorney assisted arbitrations. The Neutral shall comply with the requirements set out in Supreme Court Rule 88.05. (See Appendix C.)

Mediation/Arbitration

Dispute Resolution Process where parties attempt to reach an agreement with the assistance of the third party neutral. If an agreement is not reached, the process moves to arbitration with the neutral becoming the arbitrator with decision-making authority as set out in Rule 17.01.

Neutral Qualifications – Pursuant to Supreme Court Rule 17.04, an individual who performs as Neutral for Mediation/Arbitration shall be an attorney or a person who possesses a graduate degree in a field that includes the study of psychiatry, psychology, social work, counseling or other behavioral science substantially related to marriage and family interpersonal relationships; and has received a minimum of forty hours of civil and family mediator training. The Neutral shall have observed, mediated and/or co-mediated four domestic relations mediation/arbitrations with at least two mediators. In lieu of that requirement, the observations may be comprised of four domestic relations mediation/arbitrations or co-mediation/arbitrations conducted prior to the Neutral's inclusion on the updated court's list of Mediation/Arbitration providers, or if while representing a client, the attorney participated in four attorney assisted

Mediation/Arbitration sessions. The Neutral shall comply with the requirements set out in Supreme Court Rule 88.05. (See *Appendix C.*)

Collaborative Law

Collaborative Law is a process in which the parties retain specially trained counsel who, along with the parties, commits in writing to use their best efforts and to make a good faith effort to reach a principled, negotiated settlement. The parties and their counsel agree that they will not resort to judicial intervention except to have the court approve the settlement agreement, and sign the orders required by law to effectuate the agreement of the parties as the court determines appropriate. Through the use of four-way meetings between the parties and their counsel, the participants agree to focus on problem solving by identifying the interests of both clients, gathering sufficient information to insure that decisions are made with full knowledge, creating a full range of options, and then choosing the option that best meet the needs of the parties. The parties' counsel may not serve as litigation counsel; except to ask the court to approve the settlement agreement.

Designation

A case may be designated a "Collaborative Law Case" if the parties have signed a written Collaborative Law Agreement that provides for

1. a full exchange of information
2. the withdrawal of a party's attorney (whether or not said attorney is of record) upon the termination of the collaborative law process, and
3. the joint retention of any consultants needed to assist the parties in the Collaborative Law process, unless otherwise authorized by the written agreement of the parties within thirty days of date of service. The words "Collaborative Law Case" shall be placed below the case number in the case caption on all documents filed with the Court. Attorneys representing parties to a "Collaborative Law Case" may be, but are not required to be, of record.

Contested Matters

As long as a case is designated a Collaborative Law Case, no contested matters shall be filed with the Court, and by the Collaborative agreement waive the provision of Supreme Court Rule 17.07, Discovery.

Termination

Either party may terminate the designation of a case as a Collaborative Law Case without cause, by both providing a written notice of such termination to the other party and filing with the Court a copy of the notice of termination and a proof of service upon the other party. The filing of contested matters by either party shall also terminate the designation of the case as a Collaborative Law Case, effective on the date of such filing. Upon termination of the Collaborative Law Case designation, any party's attorney's status as attorney of record shall

terminate without further notice. The filing by an attorney of record of a motion to withdraw from a Collaborative Law Case does not terminate the designation of a Collaborative Law Case.

Neutral Qualifications – an individual who participates in Collaborative Law agreements shall be an attorney who has received fourteen hours of Collaborative law training.

Therapeutic Family Mediation

Therapeutic Family Mediation is a model of family mediation that combines traditional mediation strategies and approaches with family therapy. Therapeutic family mediation is holistic in nature and takes into account a much broader range of issues than traditional family mediation. Issues addressed may include family history, communication dynamics, specific family challenges, and the unique contributions of culture, gender, diversity, and socio-economic influences.

Neutral Qualifications – Individuals conducting Therapeutic Family Mediation should have a minimum of 40 hours of family mediation training and a graduate degree in counseling and or family therapy. The Neutral shall have observed, mediated and/or co-mediated four domestic relations family mediations with at least two mediators. In lieu of that requirement, the observations may be comprised of four therapeutic mediations or co-mediations conducted prior to the Neutral's inclusion on the updated court's list of Therapeutic Family Mediators, or if while representing a client, the attorney participated in four attorney assisted Therapeutic Mediations. The Neutral shall comply with the requirements set out in Supreme Court Rule 88.05.

Parenting Coordinator

An impartial Parenting Coordinator (PC) appointed by the Court to assist the parties in resolving issues and deciding disputed issues as previously defined in this manual that relate to parenting and other family issues, in any action for Dissolution of Marriage, Legal Separation, Paternity, where a minor child is involved and where the Court find the parties demonstrate an ongoing pattern of one or more of the following:

- a. Litigation
- b. Anger and distrust
- c. Verbal abuse
- d. Physical aggression or threats of physical aggression
- e. Difficulty in communicating about or cooperating in the care of a child
- f. Conditions that, in the discretion of the Court, warrant the appointment of a parenting coordinator.

Neutral Qualifications –A PC shall be qualified by education and training to undertake parenting coordination and shall continue to develop professionally in the role.

1. Pursuant to Supreme Court Rule 17.04, a individual who performs as PC shall be an attorney or a person who possesses a graduate degree in a field that includes the study of psychiatry, psychology, social work, counseling or other behavioral science substantially related to marriage and family interpersonal relationships; and has received a minimum of forty hours of civil and family mediator training.
2. The PC should have significant practical experience in their profession with high conflict or litigious parents.
3. The PC shall have training in the parenting coordination process, family dynamics in separation and divorce, parenting coordination techniques, domestic violence and child maltreatment, and court specific parenting coordination procedures. A model-training curriculum incorporating four modules is included in these Guidelines as Appendix A.
4. A PC shall acquire and maintain professional competence in the parenting coordination process. A PC shall regularly participate in education activities promoting professional growth. It is recommended that a PC participate in peer consultation or mentoring to receive feedback and support on cases. PC orders and/or private agreements should specify that such professional consultation be permitted.
5. A PC shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the PC's skill or expertise.

GUIDELINES FOR PARENTING COORDINATION

Overview and Definitions

Parenting coordination is a child-focused alternative dispute resolution process in which a mental health or legal professional with mediation training and experience assists high conflict parents to implement their parenting plan. This is accomplished by facilitating the resolution of their disputes in a timely manner, educating parents about children's needs, and with prior approval of the parties and/or the court, making decisions within the scope of the court order or appointment contract.

The overall objective of parenting coordination is to assist high conflict parents to implement their parenting plan, to monitor compliance with the details of the plan, to resolve conflicts regarding their children and the parenting plan in a timely manner, and to protect and sustain safe, healthy and meaningful parent-child relationships. Parenting coordination is a quasi-legal, mental health, alternative dispute resolution (ADR) process that combines assessment, education, case management, conflict management and sometimes decision-making functions.

The Parenting Coordinator (hereinafter referred to as "PC") role is most frequently reserved for those high conflict parents who have demonstrated their longer-term inability or unwillingness to make parenting decisions on their own, to comply with parenting agreements and orders, to reduce their child-related conflicts, and to protect their children from the impact of that conflict. Because the PC makes recommendations and/or decisions for the parties and possibly reports to the court, the PC should be appointed by and be responsible to the court. This delegation of judicial authority is a serious issue and courts should only appoint qualified professionals. The power and authority inherent in the role of the PC are substantial whether stipulated by the parties or assigned by the court. Therefore, it is important that any jurisdiction implementing a parenting coordination program adopts and adheres to guidelines for PC practice and programs.

As the parenting coordination model has been implemented in various jurisdictions, there has been variation in the manner in which the PC practices, the authority of the PC, the stage of the legal process when the PC is appointed and functions, the various roles of the PC, the qualifications and training of the PC, and the best practices for the role.

The alternative dispute resolution process described above as central to the parenting coordinator's role may be inappropriate and potentially exploited by perpetrators of domestic violence who have exhibited patterns of violence, threat, intimidation and coercive control over their co-parent. In those cases of domestic

violence where one parent seeks to obtain and maintain power and control over the other, the role of the PC changes to an almost purely enforcement function. Here, the PC is likely to be dealing with a court order, the more detailed the better, rather than a mutually agreed upon parenting plan; the *role* is to ensure compliance with the details of the order and to test each request for variance from its terms with an eye to protecting the custodial parent's autonomy to make decisions based on the children's best interests and guarding against manipulation by the abusing parent. ADR techniques in such cases may have the effect of maintaining or increasing the imbalance of power and the victim's risk of harm. Accordingly, each jurisdiction should have in place a process to screen out and/or develop specialized PC protocols and procedures in this type of DV case. Likewise, PCs should routinely screen prospective cases for DV and decline to accept such cases if they do not have specialized expertise and procedures to effectively manage DV cases involving an imbalance of power, control and coercion.

The purpose of these *Guidelines for Parenting Coordination ("Guidelines")* is to provide:

1. Detailed *Guidelines* of practice for PCs;
2. *Guidelines* for PCs regarding their ethical obligations and conduct;
3. Qualifications for PCs, including relevant education, training and experience;
4. Assistance to jurisdictions that are implementing parenting coordination programs by providing guidelines of practice that they can adopt; and
5. Assistance to jurisdictions, professional organizations, educational institutions and professionals in the development and implementation of parenting coordination programs.

These *Guidelines* are aspirational in nature and offer guidance in best practices, qualifications, training and ethical obligations for PCs. Although they are not intended to create legal rules or standards of liability, they do provide very specific and detailed recommendations for training and best practices because of the expressed need for guidelines for program development and training. It is understood that each jurisdiction may vary in its practices; however, for parenting coordination to be accepted as a credible professional role, certain minimum guidelines of conduct and best practices must be articulated and followed.

The *Guidelines* for Parenting Coordination include different levels of guidance:

- Use of the term "may" in a *Guideline* is the lowest strength of guidance and indicates a practice that the PC should consider adopting, but from which the PC can deviate in the exercise of good professional judgment.
- Most of the *Guidelines* use the term "should" which indicates that the practice described in the *Guideline* is highly desirable and should be departed from only with very strong reason.
- The rarer use of the term "shall" in a *Guideline* is a higher level of guidance to the PC, indicating that the PC should not have discretion to depart from the practice described.

Guideline I

A PC shall be qualified by education and training to undertake parenting coordination and shall continue to develop professionally in the role.

- A. The PC shall be required to have training and experience in family mediation. The PC should become a certified/qualified mediator under the rules or laws of the jurisdiction in which he or she practices, if such certification is available.
- B. The PC shall be a licensed mental health or legal professional in an area relating to families, or a certified family mediator under the rules or laws of the jurisdiction with a master's degree in a mental health field.
- C. The PC should have extensive practical experience in the profession with high conflict or litigating parents.
- D. The PC shall have training in the parenting coordination process, family dynamics in separation and divorce, parenting coordination techniques, domestic violence and child maltreatment, and court specific parenting coordination procedures. A model-training curriculum incorporating four modules is included in these Guidelines as Appendix A.
- E. A PC shall acquire and maintain professional competence in the parenting coordination process. A PC shall regularly participate in educational activities promoting professional growth. It is recommended that a PC participate in peer consultation or mentoring to receive feedback and support on cases. PC orders and/or private agreements should specify that such professional consultation is permitted.

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

Guideline II

A PC shall maintain impartiality in the process of parenting coordination, although a PC is not neutral regarding the outcome of particular decisions. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

- A. A PC shall withdraw if the PC determines he or she cannot act in an impartial or objective manner.
- B. A PC shall neither give nor accept a gift, favor, loan or other item of value from any party having an interest in the parenting coordination process. During the parenting coordination process, a PC shall not solicit or otherwise attempt to procure future professional services or positions from which the PC may profit.
- C. A PC shall not coerce or improperly influence any party to make a decision.
- D. A PC shall not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting coordination process.
- E. A PC shall not accept any engagement, provide any service or perform any act outside the role of PC that would compromise the PC's integrity or impartiality in the parenting coordination process.

Guideline III

A PC shall not serve in a matter that presents a clear conflict of interest

- A. A conflict of interest arises when any relationship between the PC and the participants or the subject matter of the dispute compromises or appears to compromise a PC's impartiality.
- B. A PC shall disclose potential conflicts of interest as soon as practical after a PC becomes aware of the interest or relationship giving rise to the potential conflict.
- C. After appropriate disclosure, the PC may serve with the written agreement of all parties. However, if a conflict of interest clearly impairs a PC's

- impartiality, the PC shall withdraw regardless of the express agreement of the parties.
- D. During the parenting coordination process, a PC shall not create a conflict of interest by providing any services to interested parties that are not directly related to the parenting coordination process.
 - E. A PC may make referrals to other professionals to work with the family but shall avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration shall be given or received by a PC for parenting coordination or other professional referrals.

Guideline IV

A PC shall not serve in dual sequential roles.

- A. A PC shall not serve in multiple roles in a case that creates a professional conflict.
 - 1. A child's attorney or child advocate shall not become a PC in the same case.
 - 2. A mediator or custody evaluator shall be cautious about becoming a PV in the same case, even with the consent of the parties, because of the differences in the role and potential impact of the role change.
 - 3. A PC shall not become a custody evaluator either during or after the term of a PC's involvement with the family.
 - 4. A PC shall not be appointed after serving as a therapist, consultant, or coach, or serve in another mental health role to any family member.
 - 5. A PC shall not become a therapist, consultant, or coach, or serve in another mental health role to any family member, either during or after the term of the PC's involvement.
 - 6. A PC shall not become one client's lawyer, either during or after the term of the PC's involvement, nor shall one client's lawyer become the PC in that client's case.
- B. A PC should attempt to facilitate resolution of issues by agreement of the parties; however, the PC is not acting in a formal role. An effort towards resolving an issue (which may include therapeutic, mediation and negotiation skills) does not disqualify a PC from deciding an issue that remains unresolved after efforts of facilitation.

Guideline V

A PC shall inform the parties of the limitations of confidentiality in the parenting coordination process. Information shall not be shared outside of the parenting coordination process except for legitimate and allowed professional purposes. A PC shall maintain confidentiality regarding the sharing of information outside of the scope of the parenting coordination process, which is obtained during the parenting coordination process, except as provided by court order or by written agreement of the parties.

A. Parenting coordination is not a confidential process, either for communications between the parties and their children and the PC, or for communications between the PC and other relevant parties to the parenting coordination process, or for communications with the court.²

B. A PC shall inform the parties of the following limitations of confidentiality:

1. The PC shall report suspected child abuse or neglect to child protective services whether or not a mandatory or voluntary reporter under state, provincial or federal law; and
2. The PC shall report to law enforcement or other authorities if the PC has reason to believe that any family member appears to be at serious risk to harm himself or herself, another family member or a third party.

² Parenting coordination is an unusual type of intervention that does not fit within the existing framework of rules and laws dealing with the subjects of "statutory privileges," "rules of evidence," and "professional codes of ethics" related to the subject of "confidentiality" and statements made by parents or people involved in any disputed parenting case. In cases not involving a PC, the statements of parties may be protected from use as evidence in the dispute resolution process, for any of those reasons. However, the essence of the PC concept is that all such confidentiality protections need to be stripped away, so the PC is free to make quick decisions based upon all knowledge the PC has obtained from the parties and other sources. Consequently, in order for the PC to be empowered to operate freely and effectively in the role of expeditious dispute resolver, appropriate provisions need to be included in the written agreement and/or court order of appointment for the effective waiver of all privileges and rules of evidence or professional conduct regarding confidentiality which may be waived. In addition, a clear statement should be included to provide that the PC will not provide either party with legal advice or representation or psychotherapy, and the parents are advised to seek any such advice from independent providers of their own choice. The parents are entitled to a very clear and unambiguous description of the privileges and rules they are being asked to waive in order to empower the PC to perform the rather unique services contemplated in the parenting coordination process. Likewise, the PC has a significant concern with establishing a barrier from complaints of unprofessional conduct from disgruntled parents who are not happy about PC decisions.

Guideline VI

A PC shall assist the parties in reducing harmful conflict and in promoting the best interests of the children consistent with the roles and functions of a PC.

- A. A PC serves an assessment function. The PC should review the custody evaluation, other relevant records, interim or final court orders, information from interviews with parents and children and other collateral sources, domestic violence protection orders, and any other applicable cases involving Criminal assault, domestic violence or child abuse, educational records, and analyze the impasses and issues as brought forth by the parties.
- B. A PC serves an educational function. The PC should educate the parties about child development, divorce research, the impact of their behavior on the children, parenting skills, and communication and conflict resolution skills. The PC may coach the parties about these issues.
- C. A PC serves a coordination/case management function. The PC should work with the professionals and systems involved with the family (e.g. mental health, health care, social services, education, legal) as well as with extended family, stepparents, and significant others.
- D. A PC serves a conflict management function. The PC's primary role is to assist the parties to work out disagreements regarding the children to minimize conflict. The PC may utilize dispute resolution skills from principles and practices of negotiation, mediation, and arbitration. To assist the parents in reducing conflict, the PC may monitor the faxed, emailed, or written exchanges of parent communications and suggest more productive forms of communication that limit conflict between the parents. In order to protect the parties and children in domestic violence cases involving power, control and coercion, a PC should tailor the techniques used so as to avoid offering the opportunity for further coercion.
- E. A PC serves a decision-making function. When parents are not able to decide or resolve disputes on their own, the PC shall be empowered to make decisions to the extent described in the court order, or to make reports or recommendations to the court for further consideration. PCs should communicate their decisions in a timely manner in person or by fax, e-mail or telephone. In the event decisions are provided orally, a written version shall follow in a timely manner.
- F. A PC shall not offer legal advice.

Guideline VII

A PC shall serve by parent stipulation and/or formal order of the court, which shall clearly and specifically define the PC's scope of authority and responsibilities.

- A. A court order is necessary to provide the PC authority to work with the parents outside of the adversarial process, to obtain information, and to make recommendations and decisions as specified in the order.³
- B. In addition to the court order for the PC, a written agreement between the parties and the PC may be used to detail specific issues not contained in the court order, such as fee payments, billing practices and retainers.
- C. The court order or consent order should specify a term of service for the PC, including starting and ending dates.⁴ Parents can request that a PC continue for additional terms of service following the expiration of each term or can decline to renew the PC's services. Similarly the PC can give notice prior to the end of the term of service that the PC will not continue to serve as PC.
- D. A PC should not initiate providing services until the PC has received the fully executed and filed court order appointing the PC, or the parents, their counsel (if any) and the PC have signed a consent agreement, if any.

³ In some jurisdictions, a stipulation or consent decree is required for the appointment of a PC. A few jurisdictions allow the court to appoint the PC on its own authority. In Canada, the authority of the PC to make decisions is derived from arbitration statutes and a PC may function with the parents' consent only.

⁴ Many experienced PC's have found a period of 18 months to 2 years to be optimal in terms of becoming familiar with the family and developing a working relationship with the parents.

Guideline VIII

A PC shall facilitate the participants' understanding of the parenting coordination process so that they can give informed consent to the process.

- A. The position of the PC is one of considerable authority and power. It is important that parents fully understand the extent of the parental rights and power they are assigning to the PC in the form of decision-making, the limited nature of the confidentiality of the process, the professional persons with whom the PC will be authorized to consult or obtain information, and what the parents' rights are in seeking redress with the court.
- B. In the first session, a PC should carefully review the nature of the PC's role with the parents, to ensure that they understand what the parenting coordination process involves.

Guideline IX

A PC shall fully disclose and explain the basis of any fees and charges to the participants.

- A. All charges for parenting coordination services shall be based upon the actual time expended by the PC or as directed by the local jurisdiction's parenting coordination program. All fees and costs shall be appropriately divided between the parties as directed by the court order of appointment or as agreed upon in the PC's written fee agreement with the parties with the approval of the courts.⁵
- B. Prior to beginning the parenting coordination process, and in writing, a PC shall explain to the parties and counsel the basis of fees and costs and the method of payment and any fees associated with postponement, cancellation and/or nonappearance, as well as any other items and the parties' *pro rata* share of the fees and costs as determined by the court order or agreed to by the parties with approval of the court. In cases of domestic violence involving power, control and coercion, the PC shall hold individual sessions with the parties to convey this information.

⁵ Typically the fees are split equally between the parties, although if their assets and income differ substantially, fees may be apportioned accordingly. In states that have the Income Shares child support guidelines, courts sometimes apportion responsibility for PC costs in the same percentages as child support is apportioned. The court, rather than the PC, should make a determination of the appropriate ratio of payment based on the available financial data. The order may also include a provision for the parent coordinator to alter the usual ratio of payment if one parent abuses the process. In the event that a party requests judicial review of a parenting coordinator decision and does not prevail, the court may order full payment of fees by that party.

- C. Activities for which a PC may charge typically include time spent interviewing parents, children and collateral sources of information; preparation of agreements; correspondence, decisions and reports; review of records and correspondence; telephone and electronic conversation; travel; court preparation; and appearances at hearings, depositions and meetings.
- D. The PC should comply with any local statute, constitutional rulings, or practice rules regarding fees. A PC may request a retainer or advance deposit prior to starting a case.⁶ The parties should be billed on a regular basis and notified when the retainer or advance deposit, if any, is to be replenished.
- E. A PC shall maintain records necessary to support charges for services and expenses and should make a detailed accounting of those charges to the parties, their counselor the court on a regular basis, if requested to do so.

Guideline X

A PC will communicate with all parties, counsel, children, and the court in a manner, which preserves the integrity of the parenting coordination process and considers the safety of the parents and children. The PC will have access to persons involved with family members and to documentary information necessary to fulfill the responsibilities of the PC

- A. Because parenting coordination is a non-adversarial process designed to reduce acrimony and settle disputes efficiently, a PC may engage in *ex parte* (individual) communications with each of the parties and/or their attorneys, if specified in writing in the order of appointment, PC agreement or stipulation. The PC may initiate or receive *ex parte* oral or written communications with the parties and their attorneys, legal representatives of the children, and other parties relevant to understanding the issues. The PC should do so in an objective, balanced manner that takes into consideration the possibility or perception of bias. The PC should communicate agreements, recommendations, or decisions to all parties and counsel at the same time.
- B. If reports are written, the PC should follow the court's rules or instructions regarding whether the court should receive a copy. The PC shall not communicate *ex parte* with the judge.

⁶ In some jurisdictions, the PC also requires a refundable deposit from each party for any fees and expenses incurred but not paid prior to ending the case.

- C. The PC typically should have access to any persons involved with family members including, but not limited to, the custody evaluator, lawyers, school officials, and physical and mental health care providers. The PC shall have the authority to meet with the children, any stepparent or person acting in that role, or anyone else the PC determines to have a significant role in contributing to or resolving the conflict. The PC should notify any such collateral sources that information obtained from them is not confidential and that it may be used in making decisions or writing reports or recommendations to or testifying in court.
- D. The PC should have access to all orders and pleadings filed in the case, as well as the custody evaluation report, school and medical records of the children, and reports of psychological testing that were generated prior to, during or after the pendency of the case. The court order should require that the parties execute releases and consents to permit access to such data and other relevant information.
- E. The PC should have initial individual and/or joint interviews with the parties, and may want to interview the children if the PC has the appropriate training and skills. PCs may interview any individuals who provide services to the children as needed to assess the children's needs and wishes. The communication between the parties may be in joint face-to-face meetings, telephone conference calls, individual face-to-face or telephone meetings, e-mail, or fax. The PC should determine whether separate or joint sessions are most appropriate at any particular time. In cases of domestic violence involving power, control and coercion, the PC shall conduct interviews and sessions with the parties individually.
- F. The PC shall be alert to the reasonable suspicion of any acts of domestic violence directed at the other parent, a current partner, or the children. The PC should adhere to any protection orders, and take whatever measures may be necessary to ensure the safety of the parties, their children and the PC.
- G. The PC should be alert to the reasonable suspicion of any substance abuse by either parent or child, as well as any psychological or psychiatric impairment of any parent or child.
- H. The PC should keep notes regarding all communications with the parties, the children and other persons with whom the PC speaks about the case.
- I. A PC shall document in writing all resolutions agreed upon by the parties or determined by arbitration, noting the process by which the agreement or decision was made.

- J. The PC shall maintain records in a manner that is professional, comprehensive and inclusive of information and documents that relate to the parenting coordination process and that support decisions and recommendations by the PC.

Guideline XI

A PC should attempt to facilitate agreement between the parties in a timely manner on all disputes regarding their children as they arise. When parents are unable to reach agreement and if it has been ordered by the court, or authorized by consent, the PC shall decide the disputed issues. .

- A. A PC may be granted the authority to make decisions for the parties when they cannot agree, or the PC may be allowed only to make recommendations to the parties or the court. The scope of the PC's decision-making authority may be limited in some jurisdictions by constitutional law or statute. A PC should be knowledgeable about governing law and procedure in the PC's jurisdiction regarding decision-making or arbitration by the PC.
- B. A PC shall have only the authority that is delegated in the court order or the consent provided by the parties. If so written in the order or consent agreement, a PC may have authority to resolve the following type of issues:
 - 1. Minor changes or clarification of parenting time/access schedules or conditions including vacation, holidays, and temporary variation from the existing parenting plan;
 - 2. Transitions/exchanges of the children including date, time, place, means of transportation and transporter;
 - 3. Health care management including medical, dental, orthodontic, and vision care;
 - 4. Child rearing issues;
 - 5. Psychotherapy or other mental health care including substance abuse assessment or counseling for the children;
 - 6. Psychological testing or other assessment of the children and parents;

7. Education or daycare including school choice, tutoring, summer school, participation in special education testing and programs or other major educational decisions;
8. Enrichment and extracurricular activities including camps and jobs;
9. Religious observances and education;
10. Children's travel and passport arrangements;
11. Clothing, equipment, and personal possessions of the children;
12. Communication between the parents about the children including telephone, fax, e-mail, notes in backpacks, etc.;
13. Communication by a parent with the children including telephone, cell phone, pager, fax, and e-mail when they are not in that parent's care;
14. Alteration of appearance of the children including haircuts, tattoos, ear and body piercing;
15. Role of and contact with significant others and extended families;
16. Substance abuse assessment or testing for either or both parents or a child, including access to results; and
17. Parenting classes for either or both parents.

C. The PC should use or gather written or verbal statements of the dispute from each party, as well as other relevant sources of information. The methodology used by the PC shall be fair to both parties, and be transparent to both the court and the parties. Each party shall be given an opportunity to be heard in the process. Notice shall be given as to what is expected from the participation of the parties and the consequences of nonparticipation. If one party refuses to cooperate after notice, then the PC may continue to resolve the dispute.⁷

D. The PC shall issue a written resolution of the dispute or a verbal decision in time sensitive matters to be followed by a written decision.⁸

⁷ In some jurisdictions, the PC must notify the parties of the intent to proceed to an arbitration phase, if the parties do not reach agreement on their own or with the assistance of the PC.

⁸ There is variation in the destination of the PC's recommendations and decisions. In most but not all jurisdictions in which PCs are appointed by court order, the PC is expected to send all recommendations, reports, and decisions to the court, as well as to each parent and their attorneys. Where the PC has not been appointed by the court, PCs should prepare recommendations, reports and decisions in such a manner that the court can access the information if requested. In most jurisdictions, that determination becomes an order and is considered binding. Standards for appeal and judicial review vary from jurisdiction to jurisdiction.

- E. A PC shall refrain from making decisions that would change legal custody and physical custody from one parent to the other or substantially change the parenting plan. Such major decisions are more properly within the scope of judicial authority. PCs may need to make temporary changes in the parenting plan if a parent is impaired in his or her functioning and incapable of fulfilling his or her court-ordered parenting functions until further information and assessment is obtained and the court has assumed decision-making responsibility.

Guideline XII

A PC shall not engage in marketing practices that contain false or misleading information. A PC shall ensure that any advertisements regarding qualifications, services to be rendered; or the parenting coordination process are accurate and honest. A PC shall not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

APPENDIX A:

RECOMMENDATIONS FOR COMPREHENSIVE TRAINING OF PARENTING COORDINATORS

A Parenting Coordinator (“PC”) should have training in each of the following subject areas as reflected in the modules below. It is anticipated that mental health and legal professionals will have acquired some of the knowledge and experience in the competency areas listed, particularly in Section II; and in mediation training. Training programs may want to accommodate different levels of prior training and experience by offering training in these four modules and developing a process for exempting certain professionals from any of the modules where competency is established. Individual jurisdictions should set guidelines, approve trainings, and assign trainers to ensure that candidates can demonstrate minimum competencies in order to begin practice, and should require the completion of scheduled follow up trainings to achieve mastery within a reasonable amount of time. Individual jurisdictions and provinces might consider developing mentoring programs to provide consultation and support for beginning “PCs” to reinforce and develop the skills that are covered in the recommended subject areas.

Module 1: The Parenting Coordination Process

- A. The various functions of the PC
- B. Limitations of the parenting coordination process, including the difference between parenting coordination and parent education, therapy, custody evaluation and dispute resolution processes
- C. Professional guidelines of practice for PCs
 - 1. The interplay between other professional guidelines and professional practice guidelines and local state guidelines for court-appointed PCs
 - 2. The potential for conflict of interest of the PC and the people to whom parenting coordination services are offered
- D. Issues that are appropriate and not appropriate for parenting coordination
- E. Characteristics of individuals who are appropriate and not appropriate to participate in the parenting coordination process
 - 1. Appropriate courses of action when confronted with substance abuse during the parenting coordination process
 - 2. Screening for domestic violence and appropriate courses of action when confronted with domestic violence during the parenting coordination process

3. The effect of domestic violence on parents involved in the parenting coordination process
 4. Situations in which the PC should suggest that the parties contact the supervising judicial officer, independent legal counsel, postpone or cancel the parenting coordination session, suspend the parenting coordination process, or refer the parties to other resources
- F. When to refer parties to services for child protection or "elder abuse" and the issue of confidentiality as it applies to each
- G. Special needs of the *pro se* or *pro per* party

Module 2: Family: Dynamics in Separation and Divorce

- A. Psychological Issues in Separation and Divorce and Family Dynamics
1. The impact divorce has on individuals and on family dynamics and the implications for the parenting coordination process
 2. Useful psychological research and theories applicable to the intervention for high conflict families
 3. How emotions impact on divorce issues and on a party's ability to participate effectively in the parenting coordination process.
 4. Sources of divorce/separation impasses, including parental behaviors associated with personality disorders, and the related implications
 5. How to promote awareness by the parties of the interests of persons affected by actual or potential agreements, who are not represented during the parenting coordination process
 - a. The impact of grandparents, step-parents and significant others on family systems and the parenting coordination process
 - b. Situations in which participation of non-parties (e.g., grandparents, children, new spouses) may be necessary in the parenting coordination process
- B. Issues concerning the needs of children in the context of divorce
1. The needs and adjustment of children and the effect of divorce on their relationships with their mother, father, step-families, siblings and others in the family relationship
 2. Child(ren)'s developmental stages and how they relate to divorce and parenting arrangements

3. The impact the parenting coordination process can have on the children's well being and behavior
 4. When and how to involve children in the parenting coordination process
 5. Indicators of child abuse and/or neglect and the process and duty to report allegations of child abuse and/or neglect
- C. Dealing with high conflict parents
1. The impact of parental conflict and appropriate parenting on children's well-being
 2. The dynamics of child alignments, estrangements and alienation
 3. Various parenting arrangements that consider the needs of the child(ren) and each parent's capacity to parent, including modifications for high conflict situations
- D. Dealing with domestic violence issues
1. The different research-based types of domestic violence, including conflict, instigated violence, violence involving power, control, and coercion (often referred to as male battering), female violence, and separation-engendered violence
 2. The unique problems and inherent dangers presented by domestic violence of all types in terms of parental contacts, and the need for safe PC procedures and child exchanges
 3. The importance of monitoring compliance with the parenting plan and reporting to a judicial officer any infractions of the court order, including the parenting plan
 4. The psychological impact of domestic violence on child and adolescent development
- E. The different co-parenting relationships of cooperative, parallel, and conflicted parenting

Module 3: Parenting Coordination Techniques and Issues

- A. Structuring the parenting coordination process
1. The initial session and preparing the parties for the process
 2. Scheduling the time and location, and establishing the format of each conference and focusing discussion

3. Structuring and managing the discussion, maintaining control of the sessions, and utilizing appropriate case management skills
 4. Managing separate sessions, telephonic and e-mail communication
 5. Maintaining appropriate records and documentation as a PC
- B. The PC's informed consent including limits on confidentiality
- C. The PC's service contract and fee allocation
- D. The role of the parenting plan in the parenting coordination process, including how to develop, monitor and modify a parenting plan
- E. The characteristics that enhance or undermine the effectiveness of the PC including, but not limited to: demonstrating empathy, building rapport, establishing trust, setting a cooperative tone, sympathetic listening and questioning, empowering the parties, remaining non-judgmental language use, and non-verbal communication skills
- F. Awareness of personal bias prejudices and styles that are the product of one's background and personal experiences that may affect the parenting coordination process
- G. Socio-economic, cultural, racial, ethnic, language, age, gender, religious, sexual orientation and disability issues which may arise and/or affect the parties' negotiation styles, ability or willingness to engage in the parenting coordination process
- H. Building on partial agreements including when and how to switch between dispute resolution processes
- I. Arbitration procedures, appropriate arbitration decisions, and writing and filing arbitration decisions/awards
- J. Appropriate techniques for handling difficult situations
- K. Appropriate boundaries of a PC
1. Safety procedures for those participating in the parenting coordination process
 2. Office safety policies and working with clients having current restraining and protective orders
 3. Establishing appropriate limits for client demands when and how to use outside experts effectively

- L. When and how to use outside experts effectively
 - 1. How to assist the parties in deciding on appropriate community resources
 - 2. Developing a list of social services resources, including those for domestic violence situations.
- M. The impact of high conflict client behavior on the parenting coordination process and the PC and avoiding professional burn-out
- N. Reasons for a PC to decline an appointment, withdraw or request appropriate assistance including, but not limited to, when the facts and circumstances of the case are beyond the PC's skill or experience
- O. The Americans with Disabilities Act (ADA) requirements and strategies for handling situations when faced with disability issues or special needs

Module 4: Court Specific Parenting Coordination Procedures

- A. The PC's responsibility to the court
- B. Knowledge of and adherence to jurisdiction-specific qualifications for a PC
- C. Mentorship and certification requirements, if applicable
- D. Local/state/province family law as it may pertain to the parenting coordination process
 - 1. The state statute and/or rule governing family parenting coordination
 - 2. The difference between neutrality and impartiality as it applies to parenting coordination and the ability to demonstrate each appropriately
 - 3. Legal concepts as they relate to the parenting coordination process including, but not limited to: geographic relocation, equitable distribution, child support, law of modification, parenting time adjustment, law of relocation, law of due process law of *ex parte* communication and law of privilege
 - 4. The statutory constraints of parenting coordination where domestic violence exists and/or protective orders are in place

- E. How and when the PC should interface with the court system
 - 1. The appointment and discharge processes of the PC
 - 2. The importance of a court designation to the parenting coordination process
 - 3. The ethical constraints on confidentiality and both in relation to the entire parenting coordination process and separate sessions within the process
- F. Forms utilized in local courts pertaining to parenting coordination and local court procedures
- G. How to work with legal, mental health and other professional disciplines, and promote cooperation among those dealing with the family
- H. When and how to utilize a qualified expert and/or a team approach to best serve the parties in the parenting coordination process
- I. The grievance procedure contained in the local/state rules for PCs, if any
- J. Possible ethical dilemmas that may confront a PC and how to avoid them

Domestic Violence Training: *The need for additional and/or separate training on domestic violence should continue to be considered in setting up a PC training program.*

The Guidelines for parenting coordinator are a product of an interdisciplinary task force assembled in 2001 by the Association of Family and Conciliation Courts, an interdisciplinary and international association of professional founded in 1963. The mission of the organization is to improve the lives of children and families through the resolution of family conflict. The guidelines were adopted by the Association's Board of Directors in May 2005.

See afccnet.org and 41 Family Court Review 533 (2003) and 44 Family Court Review 164 (January 2006).

APPENDIX B:

SUPREME COURT RULE 17. ALTERNATIVE DISPUTE RESOLUTION

Rule

- 17.01 Alternative Dispute Resolution – Establishment – Purpose - Definition.
- 17.02 Notice of Alternative Dispute Resolution Services.
- 17.03 Referral, Notification, and Appointment.
- 17.04 Qualification of Individuals and Organizations.
- 17.05 Status of Results.
- 17.06 Confidentiality and Settlement.
- 17.07 Discovery.

Former Provisions

Former Rule 17, Voluntary Early Dispute Resolution, consisting of 17.01 to 17.08, adopted November 30, 1989, was repealed and a new Rule 17, Alternative Dispute Resolution, consisting of 17.01 to 17.07, was adopted by order of the Supreme Court of Missouri dated October 22, 1996, effective July 1, 1997.

17.01 – Alternative Dispute Resolution Program – Establishment–Purpose–Definition

(a) Any judge by order or any judicial circuit by local court rule may establish an alternative dispute resolution program as provided in this Rule 17. It is the purpose of the Court through adoption and implementation of this Rule 17 to provide an alternative mechanism for the resolution of civil disputes, except those subject to Supreme Court Rules 88.02 to 88.08, by means of alternative dispute resolution procedures for disposition before trial of certain civil cases with resultant savings in time and expenses to the litigants and to the court without sacrificing the quality of justice to be rendered or the right of the litigants to jury trial in the event that a settlement satisfactory to the parties is not achieved through alternative dispute resolution.

(b) As used in this Rule 17, alternative dispute resolution programs include but are not limited to:

(1) “Arbitration,” a procedure in which neutral persons, typically one person or a panel of three persons, hear both sides and decides the matter. The arbitrator’s decision is not legally binding and simply serves to guide the parties in trying to settle their lawsuit. An arbitration is typically less formal than a trial, is usually shorter, and may be conducted in a private setting at a time mutually agreeable to the parties. The parties, by agreement, select the arbitrator or arbitrators and determine the rules under which the arbitration will be conducted;

(2) “Early neutral evaluation,” a process designed to bring together parties to litigation and their counsel in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process;

(3) “Mediation,” a process in which a neutral third party facilitates communication between the parties to promote settlement. A mediator may not impose his or her judgment on the issues for that of the parties;

(4) “Mini-Trial,” a process in which each party and counsel present the case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case.

(5) “Summary jury trial,” is an informal settlement process in which jurors hear abbreviated case presentations. A judge presides over the hearing, but there are no witnesses, and the rules of evidence are relaxed. After the “trial,” the jurors retire to deliberate and then deliver an advisory verdict. The verdict becomes the starting point for settlement negotiations among the parties.

(c) Each circuit is encouraged to develop other alternative dispute resolution programs that will meet the needs of the parties, the circuit and the community.

(d) All alternative dispute resolution processes shall be non-binding unless the parties enter into a written agreement, as provided in Rule 17.06 (c). A written agreement shall be binding to the extent not prohibited by law.

(Adopted October 22, 1996, eff. July 1, 1997.)

17.02. Notice of Alternative Dispute Resolution Services

(a) In each civil action to which the alternative dispute resolution program applies, a notice of alternative dispute resolution services shall be furnished to all parties to the action. The notice shall be provided to the party initiating the action at the time the action is filed. All responding parties shall receive the notice with the summons and petition. The notice shall advise parties of the availability and purpose of alternative dispute resolution services. Other means of providing notice may be designated by local court rule.

(b) In addition to the provision of Rule 17.02(a), counsel shall advise their clients of the availability of alternative dispute resolution programs.

(Adopted October 22, 1996, eff. July 1, 1997.)

17.03 – Referral, Notification and Appointment

(a) A civil action shall be ordered to alternative dispute resolution upon stipulation of the parties. A civil action may be ordered to dispute resolution upon the motion of any party or by the court. Absent the parties agreeing to an alternative dispute resolution process, the court shall determine the most appropriate process.

(b) If counsel for any party, after conferring with their respective clients, all other attorneys, and unrepresented parties, conclude that referral to alternative dispute resolution has no reasonable chance of being productive, they may opt out by so advising the court, in writing, within thirty days of the order of referral. The matter shall not thereafter be referred by the court to alternative dispute resolution absent compelling circumstances, which shall be set out by the court in any order referring the matter to alternative dispute resolution.

(c) If the parties agree to participate in the alternative dispute resolution program but cannot agree upon the neutral, then the court shall select a neutral from individuals or organizations qualified under Rule 17.04.

(d) Nothing contained in the Rule 17 shall preclude the parties from agreeing:

- (1) To participate in any alternative dispute resolution program independent of this Rule 17;
- (2) On different neutrals than that selected by the court either before or after the entry of an order entered pursuant to this Rule 17;
- (3) On a neutral not otherwise identified on any court maintained list.

(e) Each circuit shall adopt necessary local court rules assuring the impartiality of the neutral, allowing for the removal or withdrawal of the neutral, and providing for the method of, but not the rate of, compensation of all neutrals.

(f) Each circuit shall adopt such local court rules as shall be appropriate for the scheduling of disputes referred to the program.

(Adopted October 22, 1996, eff. July 1, 1997.)

17.04. Qualifications of Individuals and Organizations

Any individual providing alternative dispute resolution services independently or through an organization under this Rule 17 shall have appropriate training or equivalent experience in conducting the type of alternative dispute resolution service the individual or organization provides. Appropriate training for mediators shall include at least sixteen hours of formal training. Appropriate training for individuals providing other services shall include at least four hours of formal training. The Missouri Bar shall determine the number of hours for formal training of the individual.

(Adopted October 22, 1996, eff. July 1, 1997.)

17.05. Status of Results

(a) Absent the written agreement provided in Rule 17.06(c), any award or evaluation shall be reported only to the parties and their lawyers and shall have no effect other than as a guide to the parties in resolving the lawsuit and shall be inadmissible in any court.

(b) The parties shall advise the court within ten days of the termination of the alternative dispute resolution process only that the parties were successful in resolving their dispute or that issues remain open and unresolved.

17.06. Confidentiality and Settlement

(a) An alternative dispute resolution process undertaken pursuant to this Rule 17 shall be regarded as settlement negotiations. Any communication relating to the subject matter of such dispute made during the alternative dispute resolution process by a participant or any other person present at the process shall be a confidential communication. No admission, representation, statement, or other confidential communication made in setting up or conducting such process shall be admissible as evidence or subject to discovery, except that, no fact independently discoverable shall be immune from discovery by virtue of having been disclosed in such confidential communication.

(b) No individual or organization providing alternative dispute resolution services pursuant to this Rule 17 or any agent or employee of the individual or organization shall be subpoenaed or otherwise compelled to disclose any matter disclosed in the process of setting up or conduction the alternative dispute resolution process.

(c) Settlement shall be by a written agreement document setting out the essential terms of the agreement executed after the termination of the alternative dispute resolution process.

(d) An individual or organization providing alternative dispute resolution services pursuant to this Rule 17 or any agent or employee of the individual or organization may be called in an action to enforce the written settlement agreement reached following the conclusion of the alternative dispute resolution process for the limited purpose of describing events following the conclusion of alternative dispute resolution.

(Adopted October 22, 1996, eff. July 1, 1997.)

17.07. Discovery

In an action referred to an alternative dispute resolution program, discovery may proceed as in any other action, and all motions regarding discovery disputes shall be ruled upon by the court as in any other action. Discovery may take place both before and after an alternative dispute resolution process held pursuant to this Rule 17.

(Adopted October 22, 1996, eff. July 1, 1997.)

APPENDIX C:

SUPREME COURT RULE 88. DISSOLUTION, LEGAL SEPARATION AND CHILD SUPPORT

Rule

- 88.01 Presumed Child Support Amount.
- 88.02 Mediation Authorized.
- 88.03 Mediation of Child Custody and Visitation-Mediation Defined.
- 88.04 Mediation-When Ordered-Appointment of Mediator.
- 88.05 Mediation-Qualifications of the Mediator.
- 88.06 Mediation-Duties of the Mediator.
- 88.07 Termination of Mediation.
- 88.08 Confidentiality.

88.01 Presumed Child Support Amount

(a) When determining the correct amount of child support, a court or administrative agency shall consider all relevant factors, including all relevant statutory factors.

(b) There is rebuttable presumption that the amount of child support calculated pursuant to Civil Procedure Form No. 14 is the correct amount of child support to be awarded in any judicial or administrative proceeding. Unless a request is filed pursuant to Rule 73.01(c), a written finding or a specific finding on the record by the court or administrative agency that the child support amount under correctly calculated Form No. 14, after consideration of all relevant factors, is unjust or inappropriate shall be sufficient in a particular case to rebut the presumption that the amount of child support so calculated is correct.

Source: Section 452.340, RSMo.

Adopted Oct. 2, 1989, eff. April 1, 1990. Amended Dec. 19, 1997, eff. July 1, 1998; June 25, 2001, eff. Jan. 1, 2002.)

88.03. Mediation Authorized

Any judicial circuit may elect to establish a mediation program for child custody and visitation disputes as provided in the Rule 88.

(Adopted Dec. 27, 1990, eff. July 1, 1991.)

88.03 Mediation of Child Custody and Visitation-Mediation Defined

Mediation under this Rule 88 is the process by which a neutral mediator appointed by the court assists the parties in reaching a mutually acceptable agreement as to issues of child custody and visitation. The role of the mediator is to assist the parties in identifying priorities, exploring areas of compromise, and finding points of agreement reached by the parties is to be based on the decisions of the mediator.

The agreement reached can resolve all or only some of the disputed issues.

(Adopted Dec. 27, 1990, eff. July 1, 1991.)

88.04 Mediation-When Ordered-Appointment of Mediator

(a) The court may order mediation of any contested issue of child custody or visitation, at any time, upon the motion of a party or the court's own motion.

(b) No investigation and report will be ordered by the court during the pendency of the mediation.

(c) If the court orders mediation under Rule 88.04(a), then the mediator should meet the minimum qualifications required under Rule 88.05.

(d) The court may appoint a mediator agreed upon by the parties. If the parties cannot agree or if the court does not approve the agreed-upon mediator, the court may select the mediator.

(Adopted Dec. 27, 1990, eff. July 1, 1991. Amended June 29, 1993, eff. July 1, 1994)

88.05 Mediation-Qualifications of the Mediator

(a) A Mediator who performs mediation in a contested child custody matter pursuant to this Rule 88 shall be a person who has stated by affidavit that he or she:

- (1) Is an attorney or a person who possesses a graduate degree in a field that includes the study of psychiatry, psychology, social work, counseling or other behavioral science substantiality related to marriage and family interpersonal relationships; and
- (2) Has received a minimum of twenty hours of child custody mediation training in a program approved by the court.

(b) The court may maintain a list of mediators meeting the requirement of Rule 88.05(a) or rely on such list maintained by a bar organization.

(c) In appointing a mediator, the court shall consider:

- (1) The nature and extent of any relationship the mediator may have with the parties and any personal, financial, or other interests the mediator may have that could result in bias or conflict of interest; and

- (2) The mediator's knowledge of: (A) the Missouri judicial system and the procedures used in domestic relations cases, (B) other resources in the community to which parties can be referred for assistance, (C) child development, (D) clinical issues relating to children, (E) the effects of the dissolution of marriage on children, (F) family systems theory, and (G) mediation and conflict resolution.

(Adopted Dec. 27, 1990, eff. July 1, 1991. Amended June 29, 1993, eff. July 1, 1994.)

88.06. Mediation-Duties of the Mediator

(a) The mediator in writing shall:

- (1) Inform the parties of the costs of mediation;
- (2) Advise the parties that the mediator does not represent either or both of the parties;
- (3) Define and describe the process of mediation to the parties;
- (4) Disclose the nature and extent of any relationships with the parties and any personal, financial, or other interests that could result in a bias or a conflict of interest;
- (5) Advise each of the parties to obtain independent legal advice;
- (6) Disclose to the parties' attorneys and factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by the parties;
- (7) Ensure that the parties consider fully the best interests of the children and that the parties understand the consequences of any decision they reach concerning the children.

(b) The mediator may meet with the children of any party and with the consent of the parties, may meet with other persons.

(c) The mediator shall make a written summary of any understanding reached by the parties. A copy of the summary shall be provided to the parties and their attorneys, if any. The mediator shall advise each party in writing to obtain legal assistance in drafting any agreement or for reviewing any agreement drafted by the other party. Any understanding reached by the parties as a result of mediation shall not be binding upon the parties until it is reduced to writing, signed by the parties and their attorneys, if any, and approved by the court. If any party is not represented, the mediator shall provide to the court the written summary of any understanding reached by the parties.

(d) The mediator may act as a mediator in subsequent disputes between the parties. However, the mediator shall decline to act as attorney, counselor or psychotherapist for either party during or after the mediation or divorce proceedings unless the subsequent representation, counseling, or treatment is clearly distinct from the mediation issues. The mediator may not subsequently

act as an investigator for any court-ordered report nor make any recommendations to the court regarding the child care issues.

(Adopted Dec. 27, 1990, eff. July 1, 1991.)

88.07. Termination of Mediation

(a) At any time after two hours of mediation either party may terminate mediation ordered under Rule 88.04.

(b) The mediator shall terminate mediation whenever the mediator believes (1) that continuation of the process would harm or prejudice one or more of the parties or the children or (2) that the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely.

(c) The mediator shall report the termination of mediation to the court. The mediator shall not state the reason for termination except when the termination is due to a conflict of interest or bias on the part of the mediator, in which case another mediator may be appointed.

(Adopted Dec. 27, 1990, eff. July 1, 1991.)

88.08. Confidentiality

(a) Mediation proceedings shall be regarded as settlement proceedings. With the exception of information released pursuant to subdivision 88.06(a)(6), any communication relating to the subject matter of such disputes made during the mediation by any participant, mediator, or any other person present at the mediation shall be a confidential communication. No admission, representation, statement or other confidential communication made in setting up or conducting such proceedings not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery.

(b) No person who serves as a mediator, nor any agent or employee of that person, shall be subpoenaed or otherwise compelled to disclose any matter disclosed in the process of setting up or conducting the mediation.

(Adopted Dec. 27, 1990, eff. July 1, 1991.)