

IN THE SUPREME COURT OF FLORIDA
CASE NO. SC18-847

IN RE: AMENDMENTS TO THE FLORIDA RULES FOR QUALIFIED AND
COURT APPOINTED PARENTING COORDINATORS

COMMENTS OF FLORIDA QUALIFIED PARENTING COORDINATOR VALORIE
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SUPREME COURT CERTIFIED FAMILY LAW MEDIATOR , CERTIFIED
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November 14, 2018

Valorie Hoppenworth, LMHC, CCMHC, hereby respectfully files
a comment after being noticed by the Florida Supreme Court
about the proposed amendment to Florida rules for qualified
and court appointed parenting coordinators 15.210 and added
rules 15.220 through 15.370

The Supreme Court Committee on Alternative Dispute Resolution
Rules and Policy (Committee) filed a suggested amendment to
Rules for qualified and court appointed Parenting
coordinators on 8/17/18, then, in amending their filing on
9/25/2018, the committee proposes amending rule 15.210 and
adding new rules 15.220 through 15.370 to codify, in the
rules, the disciplinary procedures for parenting
coordinators.

I commend the Committee for their hard work. I recognize it
is far easier to find details about which to comment than to
work tirelessly to create new rules for the development of
professional standards and the best interests of the public.

This Comment is not being filed on behalf of any committee,
conference, or commission. However, my previous comments sent
to the DRC that are contained in the Committee's appendix E
pages 5-9 were fully supported by the Florida Mental Health
Counselor's Association (FMHCA). FMHCA represents the
interests of 25,817 Florida licensed individuals. Their
comments in support of mine are contained in appendix E pages
10-11 filed by the Committee. FMHCA is a state wide

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subdivision of the national professional organization known as the American Mental Health Counselors' Association (AMHCA).

BACKGROUND

The order AOSC 14-64 states *"Implementation of the statute on a statewide, uniform basis is vital to ensure the quality of both parenting coordinators and the parenting coordination process."*

The order AOSC 16-40 specifically directs the committee to recommend rules that coincide with The Long-Range Strategic Plan for the Florida Judicial Branch 2016-2021 referred to as "The Plan".

1. On the issue of promoting public trust:

Goal 5.1 of "the plan" states *"Promote public trust and confidence by maintaining high standards of professionalism and ethical behavior"*.

In rule 15.260 the Committee recommends deleting the requirement that attorneys serving on a panel or review board be without any history of discipline in subdivision a) (3). The committee argues "being in good standing is sufficient".

Respectfully, I hereby request consideration of the concept that the most qualified professionals to review mistakes of an ethical nature are more likely to be professionals without any history of discipline on their license, regardless of their qualifying profession.

Therefore, I hereby respectfully reiterate my suggestion that all participants included in reviewing the allegation of unethical conduct by a parenting coordinator (PC) including but not limited to : panel members, investigators, and review board members be free from a history of discipline on any license or certification they hold that would qualify them to practice parenting coordination, or qualify them to serve in the aforementioned positions.

In the Florida statute 61.125 defining qualifications, we have made allowances so that those who have made past

mistakes could still access the profession of parenting coordination, if they are currently in good standing. However, I disagree with the proposal of allowing those who have proven they cannot manage themselves ethically to review the work of others with regards to ethics. Allowing those who have proven they are capable of flawed judgement to review colleagues' conduct does not appear to coincide with the Plan's goal of "maintaining high standards of professionalism and ethical behavior."

Furthermore, should the Committee or this Court determine that persons who have shown a propensity to be unable to uphold the ethical practice of their profession's standards would be as equally qualified to review misconduct complaints as those whose history is free of discipline, and that this position serves the public's best interest, then I hereby suggest that a process be proposed with forms and guidelines whereby a professional with a history of discipline can apply under an exception policy for consideration to serve on the panel or board or investigative position. The application and decision of acceptance to a panel or review board or investigative role by such an exception policy should be published on the DRC website in the same way discipline is published. "Grandfathering" should not be a criteria, nor a factor in granting an exception. Mediators have a moral fitness requirement that may provide guidance for addressing this issue.

2. Regarding fairness and parity

The order AOSC 16-40 specifically directs the committee to recommend rules that coincide with Goal 1.1 of "the Plan" : *"Perform judicial duties and administer justice without bias or prejudice."*

In Rule 12.260

The committee states *"The subdivision regarding rules violation complaint committees (RVCC) is now (d), and the rule differs from Operating Procedure 6(c) by providing that the parenting coordinator members are from different regulatory backgrounds, if feasible, in order to provide a wider scope of perspectives on the RVCC."*

I commend the committee on recognizing the importance of preserving a wider scope of perspectives.

However, I respectfully request the committee commit to a firm stand on this position which promotes more uniformity and fairness. Promoting fairness is consistent with the goals of " The Plan".

I humbly suggest the following modification: the parenting coordinator members are from different non-legal regulatory backgrounds, if feasible.

- The words "non-legal" have been added because the committee is already constituted of 10 professionals with a legal background. Therefore, including 10 Parenting coordinators from non legal backgrounds promotes balance. Promoting a balanced perspective helps guard against bias and prejudice.
- The words "if feasible" have been deleted. If included, they could give the appearance of facilitating cronyism. To guard against that appearance and to consider the feasibility of representing diversity of perspectives, it seems realistic that parity could be achieved by looking amongst the 8,283 licensed psychologists under Florida statute chapter 490, and the 25,817 mental health professionals licensed under Florida statute chapter 491. It is acknowledged that not every licensed person is a parenting coordinator. Nonetheless, we are diversified throughout the State.

A balanced composition of the board and committees with persons who display a proven track record of ethical conduct seems to coincide with the goal Goal 1.1 " administer justice without prejudice" while maintaining high ethical standards to promote public confidence.

This Honorable Court's time will not be wasted by the repetition of an in-depth explanation of the differences in the Florida Administrative Codes regulating the two different mental health licenses. However, I humbly request the Court consider that each distinct profession should have a right to be reviewed by an equal amount of members that are true peers. The in-depth argument with references to the Florida Administrative codes was developed in the Committee's appendix E pages 5-9. FMHCA further wrote in support of the arguments in Appendix E pages 10-11.

Accordingly, I propose the following amendments to the language the Committee proposed:

RULE 15.260. PARENTING COORDINATOR DISCIPLINE REVIEW BOARD

(a) Generally. The PCDRB shall be composed of 20 individuals selected based on the following criteria: (1) judges: 6 circuit, family or county judges; (2) parenting coordinators: 10 qualified non-lawyer parenting coordinators with a balanced amount of qualifications licensed under chapter 491 and 490, and (3) attorneys: 4 attorneys licensed to practice law in Florida for at least 3 years who have or had a substantial family practice and are neither qualified as parenting coordinators nor judicial officers during their terms of service on the PCDRB, but who have knowledge of and experience with parenting coordination practice, statutes, and procedures. These attorneys must be members in good standing of The Florida Bar with no disciplinary history. All judges and qualified parenting coordinators must have no disciplinary history.¹

Alternatively, the Committee may wish to consider adding a representative of the public at large or "user of services" in place of one of the 10 qualified parenting coordinators. This would insure no one professional background would be guaranteed a majority vote.

3. On the issue of promoting fairness

Rule 15.260

The committee states The subdivision regarding hearing panels is now (e) and differs from Operating Procedure 6(d) in that a panel is composed of three members instead of five due to the difficulty in coordinating hearing dates experienced in grievances against mediators with five-member hearing panels.

Once again, lack of parity raises concerns. In a 3 member panel, there will always be a guarantee of at least 2 professionals with a legal background holding the majority vote. A professional being reviewed ought to have a chance to be reviewed by their peers, thus having equal access to fairness and justice. Therefore, I humbly request that the committee consider it more desirable and more ethical to

¹ Discipline shall mean: a complaint was filed, then, in the end, the professional against whom the complaint was filed received an administrative consequence from the board regulating the person's profession. That consequence resulted in an outcome other than a complete dismissal.

value principles of fairness rather than a principle dictated by convenience of scheduling.

If availability from busy active professionals seems untenable, perhaps the committee could consider allowing retired qualified non lawyer parenting coordinators to participate in the process.

Nonetheless, I favor mirroring Mediator rule number 10.820 and maintaining the status quo with a five person panel to promote fairness and equality. The principles of fairness and equality coincide with the goals of " the Plan." I humbly request the Committee's reconsideration of this issue.

4. On the issue of implementation of the statute on a statewide, uniform basis, specifically related to enforcement and review by individual circuits :

Fl supreme court order AOSCL4-64 section A administration STATES : Administrative responsibility for the implementation of section 61.125, Florida Statutes, and its attendant rules, qualifications and procedures, and this administrative order shall be placed with the chief judge or his/her designee in each circuit **or** with the Florida Dispute Resolution Center of the Office of the State Courts Administrator (DRC) (...).

The committee suggests removing rule 15.210 entirely. I humbly suggest rule 15.210 remain unchanged as it seems the best way to insure uniformity throughout the state while respecting the principle of fairness.

A. By having a single centralized body that will review parenting coordinators' conduct and disqualifications throughout the State of Florida , a more predictable outcome is insured.

B. Also, allowing for a single centralized review body, through or within the DRC, solidifies the recognition of parenting coordination as an Alternative Dispute Resolution professional role in Florida.

C. Furthermore, maintaining the DRC as a entity for oversight reduces the appearance of potential bias where cronyism is more easily practiced at a local circuit level.

Whereas one of the goals of " the plan" is to promote public confidence, it seems keeping the review and discipline in the DRC coincides with this goal.

D. In addition, information obtained on the Florida courts' website <https://www.flcourts.org/Administration-Funding/Court-Funding-BudgetJudges> confirms "*The judicial branch continues to experience some fiscal instability due to incoming filing fee revenue not meeting the authorized appropriations that are supported by the trust fund*". Therefore, it is understood that individual circuits are already faced with struggles related to dwindling resources in funding. By deductive reasoning, one can imagine lack of resources effect limitations of manpower. As a result, adding additional responsibilities for which there are no resources and for which the Chief Judges are not generally specifically trained seems perilous at best when weighing the possibility of implementing uniformity.

E. From the perspective of cost effectiveness, perhaps training a small number of staff at the DRC to review state wide applications for qualifications and keep track of discipline would be a more conservative use of the financial resources of the Florida Court system rather than creating a requirement to train at least one person in every circuit. I hereby suggest the deletion of new proposed rule 15.220 and suggest that instead the DRC maintain control of qualifications so that parenting coordination can be entirely overseen by the DRC. Thus I suggest preserving rule 15.210

Also,

In rule 15.210 the Court established the Parenting Coordinator Disciplinary Review Board (PCDRB) to perform investigations and adjudications of grievances against parenting coordinators to fulfill the requirements of rule 15.210. Furthermore order AOSC 14-64 states "*Implementation of the statute on a statewide, uniform basis is vital to ensure the quality of both parenting coordinators and the parenting coordination process.*"

F. Therefore, causing individual circuits to be more than "list keepers" does not seem likely to promote uniformity. Indicators of a lack of uniformity can be observed currently among and between circuits. In fact, some circuits have mandatory introduction meetings with their PC's as a way to insure better uniformity in performances of services, whereas others have no procedures in place to insure uniformity of PC performance administratively.

For example, Family Court Manager Monica Ausborn from the 12th judicial circuit confirms planning a meeting with all qualified parenting coordinators applicants to orient them to local court procedures; whereas the 6th and the 13th circuits have no such process in place.

G. By increasing the number of committees or circuits involved in review of qualifications or discipline, it seems inevitable that inter-circuit variations are more likely to occur. Indeed, the possibility of multiplying interpretations by the number of circuits is a reality one cannot ignore. If each circuit with its different resources is charged with having the responsibility to monitor Parenting coordinators' compliance with qualifying and disqualifying circumstances, it seems more likely than not that uniformity will be compromised. In research, to insure reliability of results, we are required to limit or eliminate confounding variables. In this instant proposal, it seems leaving any responsibility to individual circuits with varying levels of resources both financial and human would be confounding the variables which in turn could predictably lead to variations in the quality of parenting coordination services.

For this reason, I hereby suggest the deletion of new proposed rule 15.220 and instead allow the DRC to maintain control of qualifications and discipline so that parenting coordination can be entirely overseen by the DRC.

Consistency of my suggestions incorporated throughout the proposed rules.

I hereby humbly suggest that the following rules adjust the language to my aforementioned suggestions rule 15.250 subdivision d) Subdivision e) subdivision f) rule 15.260 subdivision 2) Subdivision 3) Subdivision d) Violation complaint committee (RVCC). Subdivision e)

Other questions:

a. Rule 15.280 Contempt process

Is it useful to specify if the contempt process and its finding of contempt is intended to be civil or criminal?

b. I hereby humbly request The Committee consider mirroring more exactly rules already in existence for mediators from 10.820 through 10.880. In new proposed rules 15.220

through 15. 370. If the committee agrees, then most of the following questions would be moot.

c. Rule 15.290 subdivision o

If a dismissal is entered into as a result of a joint agreement between the parenting coordinator and the complainant, what happens next ?

d. Rule 15.300

Subdivision 5 . If the Florida statute 61.125 states the process is confidential, how can the PC ignore the duty to preserve confidentiality of the process in order to defend him or herself in a hearing reviewing PC conduct as testimony is given? Should the rule address waiving the confidentiality of the process for investigation purposes ? Could the mediator rule be mirrored?

e. Rule 15.320

AoSC 18-64 directs the committee to make recommendations consistent with Goal 1.6 of The Plan to increase the use of constructive, non-adversarial resolutions in family law cases.

Subdivision 5. Requires a Parenting coordinator to notify ALL clients of discipline against the coordinator (without definition about whether all clients should include closed cases).

I suggest removing the requirement to have to notify every single client about discipline against the PC and restricting the duty to notify to clients with whom the PC has current open cases.

Otherwise, it is foreseeable the requirement to notify past clients could cause harm to families with closed cases. They may be tempted to return to litigation as a result of questioning the results of parenting coordination. Also, it seems unnecessarily burdensome and costly.

f. Rule 15.330 Subdivision c and e

Why have the entire subsections been removed although they seem pertinent?

Thank you for the opportunity to provide comments to this Honorable Court.

Respectfully submitted,

/s/Valorie Hoppenworth, LMHC, CCMHC, Florida clinical supervisor.

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Certificate of service:

I , Valorie Hoppenworth hereby certify that I have served a true and correct copy of the foregoing instrument by electronic mail and through the electronic E-filing Portal to

:

the Committee Chair, Honorable Michael S. Orfinger, Volusia County Courthouse Annex, 125 E. Orange Avenue, Suite 304, Daytona Beach, Florida 32114, morfinger@circuit7.org, and on support staff to the Committee, Juan R. Collins, Dispute Resolution Center, Florida Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399, collinsj@flcourts.org, and all interested parties listed through the portal

I hereby certify this comment has been prepared in MS Word using Courier New 12 point font which complies with the font requirements set forth in Florida rule of Appellate Procedure 9.100(1).

/s/Valorie Hoppenworth, LHMC, CCMHC, Florida clinical supervisor

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