

Standing Order 1-17 – Parenting Coordination – Effective July 1, 2017

IF THERE IS <u>NO AGREEMENT</u> OF THE PARTIES - § 6		
Judge may appoint PC in an action in which custody and/or parenting time of a child of the parties is/was an issue, IF : <ul style="list-style-type: none"> • Best interests of the child(ren) AND • Parties failed to successfully implement parenting plan OR • Level of conflict is/may become detrimental to child(ren) 	By Motion or sua sponte by judge AND always after notice and hearing	If neither party consents to pay PC, the judge is NOT permitted to require use of a PC See § 6(e) and § 15(b).
PC during pendency of action Judge may appoint PC for pendency of action. Duration: appointment ends when a judgment enters unless appointment ends earlier pursuant to S.O. 1-17. See § 14. The same PC may be appointed post-judgment.	Post-judgment PC Judge may appoint in judgment that establishes/modifies parenting plan/custody/parenting time. Duration: up to 2 years unless appointment ends earlier pursuant to S.O. 1-17. See § 14.	Order/Judgment MUST include <ul style="list-style-type: none"> • Written findings why PC is appointed per § 6 • PC’s contact info • PC’s scope of duties per § 7 • Duration of agreement • Written findings re: fees § 15(b) <ul style="list-style-type: none"> ➤ 1 or both parties consent to fees ➤ Financial means to pay ➤ Allocation of fees and expenses

IF THERE IS <u>AGREEMENT</u> OF THE PARTIES - § 5		
To be enforceable, PARTIES MUST file Form CJD 124 (Joint Petition/Motion to Change a Judgment/Order) to request PC agreement be incorporated into order or incorporated and merged into judgment.	JUDGE’S COLLOQUY W/ PARTIES Do you understand that: <ul style="list-style-type: none"> • If incorporated into an order, the agreement cannot be changed by the court without filing of motion AND a showing of good cause AND best interest of the child(ren)? • If incorporated into a judgment, there are no modifications without filing a Complaint for Modification AND a showing of material change of circumstances AND best interests of the child(ren)? • Parties have right to access the court, even if PC has binding decision-making authority? • No adverse inference drawn by the court if a party doesn’t agree to use a PC? 	JUDGE MUST FIND <ul style="list-style-type: none"> • PC agreement is written AND signed by parties AND by PC • That PC is on Category V list; OR, if not on list, how PC is qualified to be the PC (see below) • PC agreement states duties of PC, including if PC has binding, decision-making authority, and, if so, the scope of authority • Duration of appointment • Compensation amount/rate; how fees are allocated; and maximum expenditure per party • Best interests of child(ren)

QUALIFICATIONS TO BE A PC - § 3		
<ul style="list-style-type: none"> • ATTORNEY (+4 years of RPE post-licensure); OR • PSYCHOLOGIST/PSYCHIATRIST/LICSW (+2 YRS RPE); OR • MARRIAGE & FAMILY THERAPIST/MENTAL HEALTH COUNSELOR (+4 YRS RPE) • \$100K+ liability coverage AND Massachusetts licensure 	<ul style="list-style-type: none"> • P&F Court approved and/or mandatory courses including: 30 HRS of mediation; 6 HRS in IPA/DV; 35 HRS specialty training • Annual minimum of 6 hours P&F Court approved continuing education 	RPE = direct/supportive professional work with families in custody/parenting time disputes or family/child therapy undertaken after Massachusetts licensure

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<p>What are mandatory PC qualifications (§ 3)?</p>	<p>MA LICENSED ATTY (+4 years of related professional experience (“RPE”))</p> <p>MA LICENSED PSYCHOLOGIST/PSYCHIATRIST/LICSW (+2 YRS RPE); LMFT/MENTAL HEALTH COUNSELOR (+4 YRS RPE)</p> <p>\$100K+ liability coverage</p> <p>P&F Court approved and/or mandatory courses including 30 hours of mediation; 6 hours in IPA/DV; 35 hours of specialty training</p> <p>Annual minimum of 6 hours P&F Court approved continuing education</p> <p>Application procedure is found in § 4</p> <p>“RPE” = direct/supportive professional work with families in custody/parenting time disputes or family/child therapy undertaken after MA licensure) (§ 2(c))</p>
<p>Can PC who served during pendency of action serve post-judgment?</p>	<p>Yes – § 6(c)</p>
<p>Will PC’s authority override that of the Court? (§ 5(c)(iii))</p>	<p>Never! Even if a PC has binding decision-making authority, either or both parties can petition for review and Court’s authority always remains predominant</p>
<p>To what statutes is Standing Order 1-17 applicable? (§ 1(c) and (d))</p>	<p>Statutes: 208, 209, 209C (not 209A), as well as others “provided that there is an order or judgment establishing a parenting plan, custody and/or parenting time.” Although a PC can’t be appointed in a case <i>filed</i> under G. L. c. 209A, the parties could have an active 209A and still have a PC. (§ 13)</p>
<p>What are PCs PERMITTED to do? (§ 7)</p>	<p>Assist the parties in coming to an agreement on:</p> <ul style="list-style-type: none"> ➤ Minor changes/clarifications of existing parenting plan ➤ Transitions ➤ Education (including school choice)/Daycare/Tutoring/Summer school/Special Education testing and programs ➤ Enrichment and extracurricular activities ➤ Travel/Passport arrangements ➤ Clothing, equipment, personal possessions of child ➤ Communication by a parent with child when not together ➤ Role of/contact with significant others & extended families ➤ Psychotherapy/mental health care, including substance abuse or mental health assessment ➤ Psychological testing/assessment of child ➤ Religious observance/education <p>Educate parents about making/implementing decisions in <i>best interests of the child</i></p> <p>Assist in developing communication guidelines</p> <p>Suggest resources</p> <p>Assist parties in identifying and addressing patterns of behavior/developing strategies to manage or reduce conflict and/or its impact on child</p>
<p>Do PCs have REQUIRED duties? (§ 8)</p>	<p>Yes – if parties come to an agreement that modifies an existing Order/Judgment, PC must inform parties that agreement is not enforceable unless and until it is approved and incorporated into a new Order/incorporated and merged into a Judgment</p>
<p>Are PCs PROHIBITED from taking certain actions? (§ 9)</p>	<p>Yes – Here are the express prohibitions:</p> <ul style="list-style-type: none"> ➤ Can’t communicate orally or in writing with court/court personnel regarding substance of action (but see § 10(a), below) ➤ Can’t testify as expert witness ➤ Can’t facilitate agreement that would change legal custody ➤ Can’t facilitate agreement to change physical custody/parenting plan if it results in a child support change ➤ Can’t offer legal advice/representation/therapy/counseling ➤ Can’t delegate any portion of PC process to another

	<ul style="list-style-type: none"> ➤ Can't make any binding decisions without parties' express written agreement that has been previously incorporated into Order/Judgment
What are <u>PERMISSIBLE PC COURT</u> activities? (§ 10)	<ul style="list-style-type: none"> -May produce documents and testify as fact witness if subpoena issues at request of party or attorney for a child or upon action of court (§ 10(a)) -May file motion or complaint to request immediate hearing if concerned that a party or child is in imminent physical/emotional danger -May file motion or complaint for guardian to assert/waive child's privilege
What about confidential/privileged Information? (§ 11)	<ul style="list-style-type: none"> -PC can access all non-impounded records -If record is impounded, court determines scope/conditions for PC's access -PC cannot require parties/counsel for child to release any confidential/privileged information that's not in case record -Information acquired by PC during appointment → confidential. PC can only disclose this confidential info to party, attorney for child or party, and in court pursuant to § 10 -Party may release to PC his/her own and child's educational/medical/3rd party information BUT not child's psychotherapeutic records – need guardian to assert/waive child's privilege (party or PC can file motion or complaint for guardian to assert/waive)
Can a PC have an inherent conflicts of interest? (§ 12)	<ul style="list-style-type: none"> -If PC has served in a professional capacity, in this case or any other setting, with either or both parties or child, the court may not appoint that person as a PC -A PC may not thereafter serve as GAL, attorney for child, etc. for parties or child in this or any other case relating to these parties
What if there's Domestic Violence? (§ 13)	<ul style="list-style-type: none"> -If DV is credibly alleged or if there are DV findings by or against any party or child in action, court shall offer each party opportunity to consult with counsel or DV advocate before accepting parties' agreement to appoint PC -Court shall not appoint PC over objection of a party
Can a PC Appointment be Extended During Pendency of a PC Appointment? (§ 14(a))	Yes, by agreement → but only enforceable if approved by court and incorporated into Order/Judgment per § 5
	If no agreement and action is pending → by motion; per § 6(a) and § 15(b); <i>good cause</i> and in <i>best interests of the child</i> ; not more than one year
	If no agreement and no action is pending → by complaint for modification; per § 6(a) and § 15(b); <i>material change in circumstances</i> and in <i>best interests of the child</i> ; not more than one year
Can a PC Appointment be Terminated Early During Pendency of a PC Appointment? (§ 14(b))	Yes, by agreement → but only enforceable if approved by court and incorporated into Order/Judgment per § 5
	If no agreement and action is pending → by motion; <i>good cause</i> and that termination is in <i>best interests of the child</i>
	If no agreement and no action is pending → by complaint for modification; <i>material change in circumstances</i> and that termination is in <i>best interests of the child</i>
Can a PC be Replaced During Pendency of a PC Appointment? (§ 14(c))	Yes, by agreement → but only enforceable if approved by court and incorporated into Order/Judgment per § 5
	If no agreement and action is pending → by motion; <i>good cause</i> and that replacement is in <i>best interests of the child</i>
	If no agreement and no action is pending → by complaint for modification; <i>material change in circumstances</i> and that replacement is in <i>best interests of the child</i>
Can a PC Resign During Pendency of a PC Appointment? (§ 14(d))	Yes → via 15 days' written notice to parties and attorneys and copied to court; notice informs parties that they may ask for another PC
	Parties can agree to a replacement PC → but only enforceable if approved by court and incorporated into Order/Judgment per § 5
	If no agreement and action is pending → party may file motion for appointment of different PC; <i>good cause</i> and that replacement is in <i>best interests of the child</i>

	If no agreement and no action is pending → party may file complaint for modification for appointment of different PC; <i>material change in circumstances</i> and that replacement of PC is in <i>best interests of the child</i>
Can a PC's Appointment be Modified if for reasons other than (§ 14(a)-(d))? (§ 14(e))	Yes, by agreement → parties may agree to modify PC appointment; but only enforceable if approved by court and incorporated into Order/Judgment per § 5
	If no agreement and action is pending → party may file motion to change provisions of PC appointment; per § 6(a) and § 15(b); <i>good cause</i> and that change is in <i>best interests of the child</i>
	If no agreement and no action is pending → party may file a complaint for modification to modify provisions of PC appointment; per § 6(a) and § 15(b); <i>material change in circumstances</i> and that modification is in <i>best interests of the child</i> ;
What else <u>must</u> be specified in PC agreement/Order/Judgment? (§ 15)	<ul style="list-style-type: none"> -Agreement must include amount or rate of compensation -How PC's fees/expenses are allocated between parties and maximum expenditure by each party -Court must enter written findings that one or both parties consents to allocation of fees/expenses and the party/parties have financial means to make such payment Court's Order must state the allocation of fees/expenses to which parties have consented -If neither party agrees to pay the PC, court is not permitted to enter an Order/Judgment appointing a PC -"[A] judge may not require the parties to use services of a parent[ing] coordinator if the order would require one or both parents to pay for the services without his or her consent." <i>Bower v. Bournay-Bower</i>, 469 Mass. 690 (2014).
Is Standing Order 1-17 Prospective Only? (§ 16)	No - § 14 (and hence §§ 5, 6, and 15) apply to all PC appointments, regardless of whether appointment was prior to effective date of July 1, 2017