

Parenting Consultants: A Contractual Model for Resolving Parenting Disputes

By Kathleen M. Newman

Most family law attorneys would agree that of all the major disagreements that take place both during a divorce proceeding and post-divorce, issues that involve parenting minor children are most common. When parents share joint legal custody and parenting time, as most parents do, temporary changes to the parenting time schedule, vacation scheduling, participation in extracurricular activities, medical treatment, religious training and the like continue to be issues about which parents can, and often do, disagree. A court determined resolution of these types of issues can cost parents thousands of dollars in legal fees and can overburden the family court docket as well.

In these types of matters, traditional methods of alternative dispute resolution (ADR) are often ineffective. Mediators cannot always respond quickly enough to these types of issues. When the parties mediate but still can't resolve the issue, litiga-

tion has been their only option. Over the past few years, however, a new method of resolving joint legal custody and parenting issues in a cost-effective and timely manner has appeared on the scene in the form of parenting consultants (PC).

Initially, PCs were used mainly in high conflict cases where there were minor children. More recently, they are being used in traditional cases in anticipation of future parenting disagreements. Parents enter into a contractual relationship with a third party, called a parenting consultant. Generally, PCs are family law attorneys or therapists who have an in-depth understanding of family law, child development and family relationships. While rates vary, a qualified PC can be retained at \$200-\$300 per hour, with the cost usually divided equally between the parents.

Among the authority given to a PC is the ability to make temporary or non-substantial changes in the parenting time schedule, make decisions about a child's participation in a sport or other extracurricular activity, determine if a parent or a child needs therapy and choose the therapist, make school placement decisions and determine disputed medical treatment issues. PCs are appointed for discrete periods of time, often two years, and their appointment is done by a written stipulation and reduced to a court order. Once a PC has made a determination, the decision goes into effect immediately. However, most PC stipulations provide for court review if the party in disagreement with the decision brings a motion in family court within a specified period of time. While this does happen occasionally, it is unusual for a court to overturn the decision of a competent PC who usually has in-depth knowledge of the family situation and access to therapists, teachers and medical providers that the court does not have. With a standard appointment term of two years, it is not uncommon to see two or three PCs working over a period of time with a particularly high conflict family.

There is limited case law on the author-

ity of a PC since the 2007 case of *Szarzynski, v. Szarzynski*, 732 N.W. 2nd 285 (Minn. Ct. App. 2007), which held that PCs were "creatures of contract." As such, PCs only have as much authority as the parents give them in the stipulation appointing them. A district court has absolutely no authority to appoint a PC on its own volition and cannot add or take away duties contractually conferred on the PC.

Given that most PC stipulations and orders allow a parent unhappy with a PC decision to have the matter reviewed by the district court, the issue of the burden of proof has been reviewed by the appellate court. In *Kerr v. Kerr* No. A12-1663 (Minn. Ct. App. May 6, 2013), the appellate court held that the decision of the PC is to be reviewed *de novo* and the district court was not required to give deference to a PC's decision. In *Champlin v. Champlin* No. A12-0501 (Minn. Ct. App. Dec. 31, 2012), the appellate court also determined that even where a PC stipulation and order did not provide for district court review, the obligation of the court to provide for the best interests of children took precedence over parents' stipulations on how to decide parenting issues.

This year, new legislation has been proposed to regulate PCs. However, as a PC's relationship with the parties is contractual and not statutory, it appears that legislative regulation would interfere with a person's ability to freely enter into a contract.

The appointment of a PC to decide parenting and joint legal custody issues has become an effective tool for lawyers and their clients to use in crafting an ADR process for common issues relating to minor children. Everyone must understand the limits of the authority given to the PC and be confident in the skills of the PC chosen for the job. Those with strong therapeutic and legal skills, a sense of urgency and in-depth knowledge of child development and family systems are most likely to focus on the best interests of the children and to make meaningful, common sense decisions on their behalf.

Kathleen M. Newman has experience in all aspects of marital dissolutions, and has represented individuals on complex matters involving business ownership, valuing professional practices and financial analysis. Kathy sets herself apart through her strong advocacy of custody, support and parenting agreements. A board certified trial advocate in family law, a skilled mediator and a certified life coach, Kathy is also a fellow in the American Academy of Matrimonial Lawyers. Among her accolades, she has been consistently named a Top 40 Super Lawyer for family law and one of the Best Lawyers in America in family law. For more information, please visit www.kathynewmanlaw.com.

