



MINNESOTA JUDICIAL TRAINING UPDATE

**PARENTING TIME EXPEDITOR
VS
PARENTING CONSULTANT**

QUESTION: You Are Presiding Over A High Conflict Family Law Case With Numerous Parenting Time Disputes. You Would Like To Utilize The Services of A “Parenting Time Expeditor” or “Parenting Consultant” to Help Resolve those Disputes. What Is The Difference?

PARENTING TIME EXPEDITOR (PTE): A Parenting Time Expeditor, sometimes referred to as a P.T.E., is a neutral person used in family law cases to mediate and, if necessary, arbitrate parenting time disputes. The authority given to a PTE is statutory based and requires that the PTE first attempt to resolve a parenting time dispute by facilitating negotiations between the parties. If the dispute cannot be resolved by agreement, the statute mandates that the PTE “make a decision resolving the dispute.” *Minn. Stat. ¶518.1751, subd. 1b, (c)*. An order appointing a PTE must include several specific terms as set forth by statute, including the name of the individual to be appointed. (See Sample Order Attached).

PARENTING CONSULTANT (PC): In contrast, the Parenting Consultant role is not created by statute. Rather, the use of a PC is considered a “Hybrid ADR Procedure” and appointment of a PC is made pursuant to Rule of Civil Procedure 114.02(a)(10) which states:
(10) Other. Parties may by agreement create an ADR process. They shall explain their process in the Informational Statement.

The scope of authority given to a Parenting Consultant is determined by the parties and PC as set forth in the parties’ stipulation, court order and PC contract. (See Sample Order Attached)

ATTACHMENTS:

- 1) Side By Side Comparison Chart: Expeditor (PTE) vs. Consultant (PC).....2
- 2) Sample “Parenting Time Expeditor” Order.....3
- 3) Sample “Parenting Consultant” Order.....7

Comparison of Parenting Time Expeditors and Parenting Consultants in Family Law Matters

Parenting Time Expeditor (PTE)	Parenting Consultant (PC)
A PTE is Statutory Based. See Minn. Stat. § 518.1751.	A PC is NOT Statutory Based. Appointment is pursuant to Rule 114.02(a)(10).
The Court may appoint a PTE over the objection of the parties, with some exceptions including claims of domestic abuse or inability to pay the PTE fees.	The Court may NOT order that a PC be used unless both parties agree.
A PTE’s scope of authority may not exceed the authority defined by the statute. A PTE may enforce, interpret, and clarify parenting time orders and may address parenting time issues related to the schedule and access which are not specifically identified in a parenting time order. A PTE may develop a specific schedule when the order grants “reasonable parenting time.”	A PC’s scope of authority is determined by the parties and PC, according to a stipulation and court order and according to the PC contract. A PC may address and make decisions about any parenting time issue as well as any other parenting issue. If it is defined in the court order or contract, a PC may consider financial issues related to the children.
Decisions are binding pursuant to the statute unless vacated or modified by the Court. See Minn. Stat. § 518.1751, Subd. 3(d).	Whether the decisions are binding is determined by the stipulation and order, or by the PC contract. Generally, the decision is binding with the right to a review by the Court.
The PTE must be named in the court order pursuant to the statute. See Minn. Stat. § 518.1751, Subd. 2(a).	It is often best, but not necessary, to name the PC in the court order.
A PTE may be appointed to resolve limited or even one-time disputes, or may be appointed on an ongoing basis to resolve parenting time issues as they arise.	A PC is generally ordered on an ongoing basis to address issues as they arise, until the minor children are emancipated. A PC contract with an individual PC will likely be for a limited period of time, requiring new contracts to be signed.
A PTE may not be subpoenaed or called as a witness in court proceedings.	A PC may be subpoenaed or called as a witness in a court proceeding unless the court order or contract provides otherwise.

RESOURCE: The above comparison chart is the work product of Attorney Sherri Krueger, Olup & Associates, Family Law & Dispute Resolution, 11095 Viking Drive, Suite 265, Eden Prairie, MN 55344.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

TENTH JUDICIAL DISTRICT

,
Petitioner

v.

,
Respondent

**ORDER APPOINTING
PARENTING TIME
EXPEDITOR**

Court File:

The above-entitled matter came on for hearing on the _____ day of _____, at the Anoka County Courthouse, 325 East Main St., Anoka, Minnesota, before the **Hon.** _____, Judge of District Court.

_____, *Attorney at Law, appeared for and on behalf of the Petitioner.*

_____, *Attorney at Law, appeared for and on behalf of the Respondent.*

The _____ *appeared personally and pro se.*

NOW, after having duly considered the representations of the parties, the documents and proceedings herein, and the applicable law, the Court makes the following:

ORDER

I.

Pursuant to the mutual agreement of the parties herein, the Court hereby appoints Mr./Ms _____ as the Parenting Time Expeditor for the parties pursuant to Minn. Stat. §518.1751. Mr./Ms _____ may be reached at the following address, telephone number, and email:

Address: _____

Telephone: _____

Email: _____

II.

THE DUTIES OF THE PARENTING TIME EXPEDITOR SHALL BE AS FOLLOWS:

- To resolve all current and future parenting time disputes of the parties by enforcing, interpreting, clarifying, and addressing circumstances not specifically addressed by an existing parenting time order;

- Interpret ambiguities in the Court Order;

- To make a determination whether the existing parenting time order has been violated, and if so, whether one of the parties is entitled to compensatory parenting time;

- Other:

III.

DEFINITION: A “parenting time dispute” is hereby defined to mean any disagreement between the parties about visitation with one or more of their minor children, including a dispute about an anticipated denial of a future scheduled visit. All disputes shall be resolved as quickly as possible by the Parenting Time Expeditor.

IV.

LIMITATION: The Parenting Time Expeditor shall not make a decision that is inconsistent with any Order of this Court or any provision of the Judgment and Decree.

V.

CONTACT WITH CHILDREN: The Parenting Time Expeditor shall have the authority to speak with the child(ren) of the parties if he/she deems such contact to be in the best interests of the children but such contacts should be kept to a minimum.

VI.

PAYMENT OF FEES: All costs and expenses of the Parenting Time Expeditor incurred as the result of the parties’ disputes shall be paid equally by the parties, except that the Parenting Time Expeditor may charge only one of the parties or disproportionately apportion his/her fees between the parties if there is a showing of need, or if he/she finds or concludes that a party has failed to act in good faith in addressing or raising a parenting time dispute.

VII.

DUTIES AND RESPONSIBILITIES: The Parenting Time Expeditor shall first attempt to resolve a parenting time dispute by facilitating negotiations between the parties, *i.e.* mediating the parenting time dispute. If the Parenting Time Expeditor is unable to mediate a parenting time dispute between the parties, then the Parenting Time Expeditor shall make a decision resolving the dispute as quickly as possible. The agreement of the parties and/or decision of the Parenting Time Expeditor is binding on the parties unless vacated or modified by the Court as provided below.

VIII.

DECISION MAKING PROCESS: The Parenting Time Expeditor shall make a good faith effort to meet with the parties as soon as possible after receipt of this Order, but in no event longer than five (5) days; and after meeting with the parties, he/she shall render a decision on parenting time within five (5) days of receiving all necessary information upon which such decision is to be based. However, the Parenting Time Expeditor shall not lose authority to make any decision if circumstances beyond his/her control make meeting the five (5) day timeline impractical.

IX.

DISCLOSURE OF DECISION: The Parenting Time Expeditor may advise the parties verbally of the decision or agreement. The Parenting Time Expeditor shall, however, place all agreements or decisions in writing and provide a copy to the parties and their counsel.

X.

REVIEW BY COURT: Either party may move the District Court to modify or vacate the decision of the Parenting Time Expeditor by serving an appropriate motion upon the opposing party within _____ days of the date of the Parenting Time Expeditor's written decision or the agreement of the parties. The decision of the Parenting Time Expeditor shall remain in effect pending any motion to the District Court.

XI.

ENFORCEMENT: Either party may move the Court at any time to enforce a written agreement of the parties or decision of the Parenting Time Expeditor.

XII.

CONFIDENTIALITY AND IMMUNITY: The Parenting Time Expeditor is immune from civil liability for actions taken or not taken when acting under this order. Statements made and documents produced as part of the Parenting Time Expeditor process which are not otherwise discoverable are not subject to discovery or other disclosure and are not admissible into evidence for any purpose at trial or in any other proceeding, including impeachment. Further, the Parenting Time Expeditor must not be subpoenaed or called as a witness in any court proceeding. The notes, records, and recollections of the Parenting Time Expeditor are

confidential and must not be disclosed to the parties, the public, or anyone other than the Parenting Time Expeditor unless:

- 1) All parties and the Expeditor agree in writing to the disclosure; or
- 2) Disclosure is required by law or other applicable professional code.

Notes and records of the Parenting Time Expeditor must not be disclosed to the Court unless after a hearing the Court determines that the notes or records should be reviewed *in camera*. Those notes or records must not be released by the Court unless it determines that they disclose information showing illegal violation of the criminal law.

XIV.

TERM: The appointment of the Parenting Time Expeditor shall commence as of the date of this order and continue until such time as the Parenting Time Expeditor is discharged by the Court.

XV.

REMOVAL: If a Parenting Time Expeditor has been appointed on long-term basis, a party or the expeditor may file a motion seeking to have the expeditor removed for good cause shown.

XVII.

Service of a copy of this order upon each of the parties by United States Mail shall be deemed due and proper service for all purposes.

BY THE COURT

Hon. Alan F. Pendleton
Judge of District Court

Dated:

STATE OF MINNESOTA
COUNTY OF ANOKA

DISTRICT COURT
TENTH JUDICIAL DISTRICT
Family Court Division

In Re the Marriage of:

Petitioner,

and

Respondent.

**STIPULATION AND ORDER
TO APPOINT PARENTING
CONSULTANT/COORDINATOR**

Court File No. _____

The above-entitled matter came duly before the undersigned, the Honorable _____,
Judge of _____ County District Court, on the _____ day of _____, 20____,
at the _____, _____, Minnesota

Based on the stipulated agreement of the parties as contained in this Order and based upon the file and prior proceedings herein, the Court issues the following **FINDINGS AND ORDER**:

I. FINDING

- A. The parties have agreed that a Parenting Consultant (PC) is necessary to assist them in resolving disputes regarding their minor children.¹
- B. The parties have agreed that the PC will be _____
- C. The PC's address is _____
- D. _____'s phone number is _____

¹ "Parenting Consultant" and "Parenting Coordinator" are interchangeable terms. "Parenting Coordinator" is preferred nationally, and "Parenting Consultant" is preferred in Minnesota. Please see the "Guidelines for Parenting Coordination" at http://www.afccnet.org/resources/standards_practice.asp.

II. DEFINITION

- A. Pursuant to Rule 114.02(a)(10) of the Minnesota Rules of Practice – District Courts, which allows the parties to create an ADR process, _____ is hereby appointed the PC for the parties under the following terms and conditions, and shall be considered a person presiding at an alternative dispute resolution proceeding pursuant to Minnesota Statute § 604A.32.
- B. The PC is a person or persons appointed by the Court after the agreement of the parties to assist them in the resolution of conflicts regarding their children.
- C. The confidentiality provisions under Rule 114 do not apply to the PC.
- D. The PC does not provide therapy or legal advice.

III. TERM

- A. The parties agree to have the PC for **(CHOOSE ONE)**:
1. A term of _____; or
 2. Until children's emancipation; or
 3. Other mutual agreement of the parties.
- B. The PC retains the discretion to terminate service at any time for any reason.
- C. If a different PC is needed because the selected one is unavailable, does not agree to serve, or is removed by written agreement of the parties, a new PC shall be named by mutual agreement of the parties or by obtaining a list of five (5) qualified persons from the present PC and alternately striking names. Petitioner shall strike the first name. The parties may jointly agree on another selection method if both are in agreement.

IV. DUTIES AND RESPONSIBILITIES

- A. The PC shall have the duty and responsibility to assist the parties in resolving all child-related issues submitted for resolution, except for those issues specifically excluded by paragraph B, below.
- B. The PC is prohibited from addressing spousal support, child support and permanently modifying of custody labels unless the parties agree, in writing, that the PC may address such issues and the PC agrees to address such issues.

V. SCOPE OF AUTHORITY

- A. The PC shall have authority to perform the following, which are meant to be inclusive, but not limiting:
1. Authorize "trading" of time with the children where one party requests and the other party declines;
 2. Award compensatory time to one parent because the other parent did not permit the children to be with the parent who had custodial or access rights under the existing court order, prior decision of a PC or Parenting Time Expeditor (PTE);
 3. Interpret ambiguities or unclear provisions in the parties' stipulations and/or court orders;
 4. Decide parenting issues that were not contemplated by the parties when they addressed parenting issues in previous stipulations or are not addressed by an existing court order or prior decision of the PC;

5. Decide allocation of fees and expenses related to parenting issues (such as fees for extracurricular activities, but excluding child support) that were not determined by a court order or prior decision of a PC;
6. Decide alterations in the access schedule, including transportation;
7. Decide revisions to previously decided parenting issues as needed to meet changing circumstances;
8. Decide the holiday and vacation access schedule between the parties and the minor children to the extent the holidays and specific vacation dates have not been determined by a court order, prior decision of a PC or PTE, or are no longer workable due to a change in circumstances;
9. Decide school attendance, child care, activity, vacation and summer camp issues, including dates and times for the same, to the extent the specific vacation dates have not been determined by a court order, prior decision of a PC or PTE, or are no longer workable due to a change in circumstances;
10. Decide the appropriate school placement for the child(ren);
11. Consult with outside sources, such as teachers, therapists, physicians, attorney for either party, family members, etc., and review school records and speak to, or review records of, therapists with whom the individual and/or child(ren) have met;
12. Require independent evaluations and psychological testing of the parties and/or child(ren) if the PC determines it would be helpful to the resolution of problems;
13. Communicate, obtain and/or provide information with any person without the necessity of securing a release from the parties;
14. Require that a parent or child(ren) participate in therapy, anger management, etc., and select the therapist, if therapy or professional assistance would be helpful to the resolution of the problems or assist the child(ren);
15. Decide issues with input from only one party, where the other party has failed to participate in the decision making process; and,
16. Make recommendations, memorialize agreements and make decisions, including the authority to impose consequences for non-compliance.

B. The PC may require that the parties enter into a safe harbor agreement with a mental health provider before beginning services, as provided in item X below (“Safe Harbor”).

C. OTHER: _____

VI. PROCESS FOR REQUESTING ASSISTANCE FROM PC

A. The parties shall first attempt to resolve the issues themselves before requesting assistance from the PC.

B. Upon notification by a party that there is an issue in controversy, the PC will meet with the parties by telephone, in person, or by other means as determined appropriate by the PC, to discuss the issue in controversy. The PC will review all appropriate information relating to the issue in controversy, including, but not limited to, any existing and prior court Orders and any agreements of the parties.

- C. The PC may meet and communicate with the child(ren) as the PC deems appropriate.
- D. Both parties shall participate in the dispute-resolution process defined by the PC and governed by Minnesota Rules of Practice, Rule 114 in accordance with the principles of due process. The process will include, at a minimum, the opportunity for each to express his or her opinion. In the event a party does not attend a meeting or otherwise fails to respond in a timely manner, the PC may deem the party's participation waived. The PC may also proceed by joint or individual in-person meetings, telephone, written correspondence or other means determined appropriate by the PC as the situation warrants. If a party fails to provide input into a decision of the PC after a reasonable period of time following a request for input, the PC may resolve this issue in controversy without input from that parent.
- E. Once a PC has agreed to make a decision about an issue that decision shall be made promptly. All decisions of the PC shall be made promptly in writing. Decisions of the PC are by their very nature often made in circumstances involving time constraints, and possibly emergencies; therefore, these decisions may, initially, be made orally, but must be communicated to both parties and subsequently documented in writing. These decisions are binding when made.

VII. DUTIES OF PARTIES

- A. Both parties shall cooperate in good faith to resolve the matter(s) in dispute with the assistance of the PC.
- B. To the extent a release is required by any non-party to disclose information to the PC, both parties shall sign all releases necessary for the PC to access any information the PC deems necessary.
- C. The parties agree to abide by all decisions that are made by the PC, unless modified by subsequent court order, including during periods in which a motion is pending before the court.
- D. It is the responsibility of the parents to provide the PC with all necessary information to stay in communication with them, including all phone numbers in order of priority for communication; mailing addresses; residence; and priority e-mail address.
- E. The PC may consult with other professionals as necessary to conduct their duties. The parents shall execute all necessary authorizations to permit such communication without limitation.
- F. If one or both of the parties disagree with the decision of the PC, that party must obtain a court hearing date to contest the PC's decision
 1. The party in disagreement with a decision of the PC shall bring a motion to contest the PC's decision.
 2. The motion must be brought within fourteen (14) days of receiving the written decision.
 3. The PC shall receive all pleadings at the time of filing.
 4. The party shall be obligated to file and serve pleadings on the motion within the time frame of the law and procedural rules governing Family Court.
 5. Failure to seek a hearing date is a waiver of objection.

VIII. PAYMENT OF FEES

- A. The parties agree to pay the fees and retainer as required by the PC fee agreement.
- B. It is within the discretion of the PC to allocate fees and costs differently if the PC determines that one party has unreasonably contributed to the costs or abused the process. The PC may allocate the fees, costs and retainer in a manner different than described above when the PC deems appropriate.
- C. The PC reserves the right to suspend all services, including provision of any written documentation, until payment of any unpaid balance and required retainer is made.
- D. In the event one party does not pay his or her share of the fees, costs and retainer, the other party may pay the full retainer requested and bring a motion seeking reimbursement for the non-complying party's share of the retainer.
- E. It is understood that despite the fact that the PC may make decisions or orders in favor of one party, both parties will continue to be responsible for the payment of fees associated with such services.

IX. CONFIDENTIALITY AND PRIVILEGE

- A. This alternative dispute resolution process is not confidential.
- B. There is no privilege accorded to the PC pursuant to law, and the confidentiality provisions of do not Rule 114 apply.
- C. All communications with the parties and others with whom the PC has conferred or discussed the case are subject to disclosure, with the exception of the communications identified in item X ("Safe Harbor") below.
- D. Statements made to the PC by the attorneys and/or parties may lose the protection of the attorney-client privilege.
- E. Licensed mental health professionals providing services as a PC are mandated to report any:
 - 1. Suspected maltreatment or abuse of children (Minn. Stat. § 626.556); and,
 - 2. Suspected maltreatment or abuse of vulnerable adults (Minn. Stat. § 626.557).
- F. Licensed mental health professionals also have a "Duty to warn" as defined by Minn. Stat. § 148.975.
- G. An attorney PC is not a mandated reporter of child maltreatment but has the discretion to make such a report.

X. SAFE HARBOR

- A. If the child(ren) are receiving mental health services, the PC may seek information from his/her/their mental health provider(s).
- B. In order to preserve the safety and confidentiality of the child(ren)'s therapeutic environment, it is essential that the child(ren) feel free to speak openly with his/her/their therapist(s) without fear of their statements being disclosed, so that the therapist's office may serve as a "safe harbor" for the child(ren).

C. Information obtained by the PC which he or she determines is or could be harmful to the child(ren) or their relationship with a treating professional or parent may be, within the discretion of the PC, made unavailable to a parent or counsel for a parent.

D. Any information given to the PC by (a) mental health provider(s) for the child(ren) will be maintained as confidential by the PC, unless the PC and mental health professional agree otherwise.

E. Any documents containing information provided by (a) mental health professional(s) treating the child(ren) shall be kept in a file separate from the PC file.

F. Neither parent shall, nor will either parent permit his or her attorney to, subpoena the information contained in this separate file.

G. Any party (or his or her attorney) who seeks to interrogate the PC about or to subpoena the information in this separate file, shall be liable for all attorney fees and costs incurred to respond to such requests or to quash a subpoena.

H. If the PC makes a decision based on input from the therapist(s), the PC reserves the right to document this decision stating only "I have decided this based on input from the child(ren)'s therapist," without further explanation.

I. On motion of either parent the information made unavailable to the parents shall be presented to the court for an *in camera* review with explanation of risk of harm.

XI. LEGAL PROCEEDINGS

A. The PC shall not be precluded from participation as a witness or collateral contact in a custody or parenting time study or inquiry involving either party. Both parties may, upon making payment as provided by the law and rules of Court pertaining to experts, use the PC as a collateral resource and/or call the PC as a witness to testify in any proceeding involving the child(ren) or the subject matter of the PC's work with the parties.

B. The PC is not a party to the proceedings.

C. The PC does not communicate with the Court except by subpoena or court order.

XII. REVIEW BY THE COURT AND/OR APPEALS

A. The procedure below shall be followed and neither of the parties may apply to the Court for relief from the decision of the PC, except as provided below and in item VII(F)(1-5).

B. If one or both of the parties disagree with the decision of the PC, that party must obtain a court hearing date to contest the PC's decision

1. The party in disagreement with a decision of the PC shall bring a motion to contest the PC's decision.
2. The motion must be brought within fourteen (14) days of receiving the written decision.
3. The PC shall receive all pleadings at the time of filing.
4. The party shall be obligated to file and serve pleadings on the motion within the time frame of the law and procedural rules governing Family Court.
5. Failure to seek a hearing date is a waiver of objection.

C. Any claims filed in court arising from the parties' work with the PC, including, but not limited to, fee disputes, shall be raised in the file under which the Order was made.

D. Parties agree that the Court shall review the decisions of the PC using the abuse of discretion standard.

XIII. NOTICE TO PC

A. The attorneys, or parties if there are no attorneys, shall provide the PC with a fully executed copy of this Stipulation and Order.

XIV. APPOINTMENT CONTINGENCY

A. The appointment of the PC is contingent upon the execution of the PC's fee arrangement and subsequent filing of the fee agreement with the Court. The appointment is not final until the fee agreement is attached as an Exhibit to this Order.

STIPULATION

The parties and their counsel stipulate their intent that the Court sign and enter the above Stipulation as its Order.

Petitioner

Respondent

Subscribed and sworn to before me
this ___ day of _____, 20__.

Subscribed and sworn to before me
this ___ day of _____, 20__.

Notary Public

Notary Public

APPROVED AS TO FORM:

ATTORNEY FOR PETITIONER

ATTORNEY FOR RESPONDENT

ORDER

The Court, having reviewed the Stipulation herein of the parties and finding the same to be fair and equitable and in the best interests of the minor children of the parties, and thereafter being fully advised in the premises, does hereby enter the Stipulation of the parties as its Order.

Dated: _____

Judge of District Court