

parties have child(ren) in common or a party is pregnant. There is no discretion allowed to the judicial officer. The judicial officer must issue an Education Order to all parents of common, minor children.

The judicial officer must issue an Education Order even when parents agree that an Education Order is unnecessary. If a judicial officer issues an Education Order in such circumstances, it may—even with the most thoughtful and well-intentioned judicial officer—unintentionally obstruct or interfere with a parent’s right to direct the minor child’s education in violation of Ariz. Rev. Stat. § 1-602(A)(1). Under such circumstances, the Education Order may also lack statutory authority under Ariz. Rev. Stat. § 25-403.02 which governs parenting plans. This statute requires family courts to include certain elements (§ 25-403.02(C)) within parenting plans but does not require Education Orders. As to other elements of a parenting plan, Ariz. Rev. Stat. § 25-403.02(D) only grants the family court authority to determine any element “*if the parents are unable to agree on any element to be included in the parenting plan.*” § 25-403.02(D) (emphasis added).

In addition, mandatory Education Orders in all cases also present an unnecessary hurdle for many parents. In their current form, the rules require a judicial officer to issue an Education Order to parents whose common child is not yet born, whose child is not of school age, whose child is homeschooled, whose minor child has graduated high school and is attending a community college or university, or whose minor child falls within one of the other exceptions to school instruction as provided by A.R.S. § 15-802. Yet the current rules require those parents, or their attorneys, to fill out an Education Order. The mountain of forms that a self-represented litigant must navigate in a family law case is already large. We respectfully submit that family courts should not require them to fill out an unnecessary form of order.

The guiding star of Title 25 regarding children's issues is the child's best interests. A.R.S. § 25-103(B). We believe the better approach on Education Orders is to give the judicial officer's discretion to issue one and to allow that discretion to be guided by the child's best interests. In most cases, it may well be true that an Education Order is necessary and appropriate to further the child's best interests for the

reasons set forth in the Petition and the Comment of the Education Law Practitioners. However, it may not be in the child's best interests in all cases. The current, mandatory language of Rules 44.1(e), 45(c), 78(g), and 91.3 does not allow the family law judicial officer to make an individualized determination of whether an Education Order is, or is not, in the best interest of the child(ren) in a particular case.

The revised version of Forms 19 and 20 (*see* Comment by Judges Burnett and Fisk) are great resources for families going through the family court process, as well as the many mediators, Conciliation Courts, judicial officers, and court staff who help those families. It is also a benefit to many educational institutions who encounter those families. The forms should be included in the Arizona Rules of Family Law Procedure. However, one size does not fit all, especially when dealing with children. Parents who agree to use the appropriate Education Order should be encouraged to do so, and where it is in the child's best interests, the family law judicial officer should issue an Education Order. In all other cases, they should not be issued.

For the foregoing reasons, the undersigned respectfully request that the Court modify Rules 44.1(e), 45(c), 78(g), and 91.3, Rules of

Family Law Procedure, as indicated in the attached before final adoption of the rule amendments.

RESPECTFULLY SUBMITTED this 29th day of April, 2024.

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