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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of	)	Arizona Supreme Court No. R-24-0036
	)	
PETITION TO AMEND RULE 2	)	
OF THE ARIZONA RULES OF	)	Comment of the Committee on
FAMILY LAW PROCEDURE	)	Family Court
_____	)	

Undersigned, on behalf of the Committee on Family Court (“COFC”), f.k.a. Family Court Improvement Committee, files this Comment regarding the State Bar’s Petition to amend Rule 2, Arizona Rules of Family Law Procedure (ARFLP).

Rule 2, ARFLP, addresses the applicability of the Arizona Rules of Evidence in family court, and includes provisions on how a party may invoke those Rules by filing a Notice. The State Bar seeks to amend Rule 2 as follows:

- Modify Rule 2(a) to address (1) whether a new notice must be filed in a post-judgment matter and (2) to provide additional language regarding notices; and
- Adopt a new provision as Rule 2(c) dealing with the ability to revoke a Rule 2 Notice; and

- Adopt a new provision as Rule 2(e) addressing children’s statements and exempting those out-of-court statements from Rule 802, Ariz. R. Evid.

At its February 15, 2024 meeting, COFC considered the pending Petition and its members voted unanimously to support in part and oppose in part the State Bar’s Petition as set forth below.

As to the State Bar’s proposed modification of Rule 2(a), COFC has filed a pending petition, R-23-0050, which also addresses the effect of a Rule 2 Notice on a post-judgment petition. Respectfully, COFC believes its proposed amendment is superior, and addresses an issue that needs to be addressed. As to the State Bar’s language regarding filing a Notice as to all evidentiary hearings or a specific hearing, COFC believes that the existing language in Rule 2(a) addresses the issue, and the State Bar’s proposed additional language is unnecessary.

As to the State Bar’s proposed inclusion of a provision regarding revocation of a Rule 2 Notice, COFC supports the State Bar’s language as meritorious. As a stylistic point, there was discussion at COFC that the Court may wish to include this revocation language as Rule 2(e) so as not to work a renumbering of existing Rule 2(c)-(d).

As to the State Bar’s new provision addressing children’s statements and exempting those out-of-court statements from Rule 802, Ariz. R. Evid, COFC

respectfully opposes the Petition. The State Bar's proposed language is incredibly broad as it would allow any individual—for example, a party, a grandparent, a party's friend, or a neighbor—to come to the family court and testify regarding what the children have told that witness about the children's wishes to parenting time or legal decision-making, alleged abuse and neglect, and their relationships with family members and significant others.

COFC believes, consistent with applicable law, that the family court should consider reliable and relevant statements from children in determining what is in the children's best interests; however, it disagrees that a waiver of the hearsay rule is the best approach to ensure that the family court hears from the child.

COFC members expressed various concerns that the State Bar's proposed rule would increase pressure on children by parents and that the family court could be confronted with possibly contrary statements from the children to different witnesses. Another member expressed that the above concerns are especially heightened in relationships in which there has been domestic violence.

COFC also heard concerns that there are increasing objections at evidentiary hearings and trials as to the family court considering a child's statements during a child interview under Rule 12, ARFLP. That's troubling. Rule 12(b) provides a broad definition of "court" to include Conciliation Court

services, an agency, or other third-party professionals appointed by the family court. COFC believes that a family court should consider statements made by children under the provisions of Rule 12, as that rule provides for reliable reporting of the children's statements to the family court or a court-appointed professional. If the State Bar's concern is that Rule 12 interviews are not being considered, COFC respectfully submits that the better solution would be to amend Rule 12, rather than abandon Rule 802 in its entirety. A proposed revision to Rule 12 follows:

## RULE 12

### Court Interviews of Children

(a)- (b) [No change]

**(c) Record of the interview**

(1) [No change]

(2) *Sealing.* For good cause and after considering the child's best interests, the court may seal from the public all or part of the record of the interview. **If the record of the interview, or any part thereof, is admitted into evidence, the court may also seal from the public that record or part thereof.**

(3) *Availability to the Parties.* The parties may stipulate that the court not provide them with a record of the interview, **including if the record or any part thereof is admitted into evidence.** If a party makes a request for recording, the court must make the record available to the parties not later than 14 days before the hearing at which the court will consider the interview, unless the court finds good cause for a different deadline.

(4) **Admissibility.** **The record of the interview shall be admissible in evidence, regardless of whether a party has filed a notice under Rule 2(a), provided that the record meets the requirements of Arizona Rules of Evidence 401-403.**

**(d) [No change]**

If the Court wishes, COFC is willing to submit proposed revisions to Rule 12, ARFLP, as a freestanding rule petition to be considered in next year's rule cycle. However, COFC respectfully submits that the State Bar's proposed Rule 2(e) provision regarding hearsay should not be adopted.

For the foregoing reasons, COFC respectfully requests that the Court adopt the State Bar's proposed new Rule 2(c) regarding revocation of a notice, deny the State Bar's proposed changes to Rule 2(a), and decline to adopt the proposed Rule 2(e). As to COFC's proposed changes to Rule 12, COFC will follow the Court's direction if the Court wishes to have a new petition filed on that proposed amendment.

DATED this 30th day of April 2024.

Greg Sakall

Chair, Committee on Family Court