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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)	Comment of the Arizona Chapter
OF THE ARIZONA RULES OF)	Of the American Academy of
_____)	Matrimonial Lawyers

Undersigned, on behalf of the Arizona Chapter of the American Academy of Matrimonial Lawyers (AZAAML), 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;
- 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 such out-of-court statements from Rule 802, Ariz. R. Evid.

In response to the State Bar's proposed modification, the Committee on Family Court ("COFC"), f.k.a. Family Court Improvement Committee filed its own proposed amendment (R-23-0050). AZAAML believes that the COFC proposed amendment should be adopted as the superior proposed Rule.

AZAAML supports the provisions of the State Bar proposed amendment insofar as it includes a provision regarding revocation of a Rule 2 Notice. The COFC proposed amendment likewise includes such a provision.

However, AZAAML respectfully opposes the State Bar's Petitioner to the extent it proposes to create a new exception in family court to the Rule against Hearsay (802, Ariz.R.Evid) for children's out of court statements. The breadth of the State Bar's proposed language would allow any individual to testify regarding what they allege a child has told them about the child's wishes as to parenting time or legal decision-making, alleged abuse and neglect, and their relationships with family members and significant others.

While the family court must consider reliable and relevant statements from children of suitable age and discretion when determining their best interests, a blanket waiver of the hearsay rule under these circumstances creates more issues that it resolves. Such rule would create incentives for parents or third parties to employ persuasion (and pressure) upon children to make certain statements and would likely result in children presenting contradictory statements to different witnesses depending on their current situation. Children who are "pleasers" may tell each parent what they think that parent wants to hear,

rather than expressing themselves honestly. This proposed Rule will further throw children into the middle of parental disputes when the goal of the family court should be to insulate and remove them from such a position.

The family court already has at its disposal resources to aid in gathering relevant and admissible evidence regarding a child's wishes. Rule 12, ARFLP allows for a child interview to be conducted by the court (including Conciliation Court services, an agency, or other third-party professionals appointed by the family court). This rule provides for reliable reporting of the children's statements by an objective third party to the family court or a court-appointed professional.

For the foregoing reasons, AZAAML respectfully requests that the Court:

- a. Deny the State Bar's proposed changes to Rule 2(a) as redundant.
- b. Adopt the State Bar's proposed new Rule 2(c) regarding revocation of a notice.
- c. Deny the State Bar's proposed changes to Rule 2(e).

DATED this 1st day of May 2024.

/s/ Lisa C. McNorton

Lisa C. McNorton
President, AZ Chapter of The American
Association of Matrimonial Lawyers