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Superior Court of Arizona
Pinal County

DANIEL A. WASHBURN
JUDGE

R-15-0018

February 20, 2015

Committee on the Review of Supreme Court Rules Governing
Professional Conduct and the Practice of Law ("Committee")
State Courts Building
1501 West Washington
Phoenix, Arizona 85007

Re: Petition to Amend Rule 31, Rules of the Supreme Court

Dear Members of the Committee:

Recent proposed changes to Rule 31 of the Rules of the Supreme Court would likely have a negative impact to our county's conciliation court and services we provide from the family law bench. From January, 2011 through July 2014 my judicial assignment involved family law matters in Pinal County. During this assignment I frequently used Pinal County's Family Services of the Conciliation Court ("FSCC") to provide mediation services to parties involved in cases assigned to me. I believe that the current proposed changes to Rule 31 would create a hardship on FSCC, as well as other conciliation courts in Arizona.

I am certain that the proposed changes will result in increased costs and delayed time to disposing of cases mediated by FSCC. As you are aware, under the current version of Rule 31, mediation is not considered the practice of law and non-attorney mediators or mediator-attorneys not licensed in Arizona are allowed to draft a mediated agreement and file it with the court as long as the mediator is employed, appointed or referred by a court or government entity and is serving as a mediator at the direction of the court or government entity.

The proposed changes to Rule 31 would maintain that mediation is not the practice of law; however, to draft the mediated agreement, the Rule change would require that the mediator be either an attorney licensed in Arizona, be supervised by an attorney licensed in Arizona or be a certified legal document preparer, whether or not the mediator is serving at the direction of the Court.

In Pinal County FSCC employs several non-attorney mediators, who at a minimum, have master's degrees in a behavioral health science and mediation training.

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These mediators are often more skilled than Arizona licensed attorneys and document preparers. As a judge in Pinal County, I am confident that the mediators employed by FSCC are skilled mediators and should be exempt from the requirements proposed by the suggested changes to Rule 31.

Currently, only two of our eight FSCC mediators are licensed to practice law in Arizona. As a result, to comply with the proposed changes, six of the FSCC mediators would have to become licensed attorneys or licensed document preparers. Under the current economic conditions of the State and local governments, it is not likely Pinal County will absorb the costs associated with these individuals becoming licensed attorneys or document prepares.

It should be noted that to become a certified legal document preparer (LDP) the individual need only a high school diploma or GED, two years of law-related experience and pass the LDP exam. FSCC requires a much higher educational standard of its mediators than what is required of an LDP. Notwithstanding the fact that FSCC's mediators are more qualified than a LDP requiring FSCC's mediators to become LDPs would create enormous burden upon FSCC, including costs and unnecessary training.

Finally, not only will the proposed changes to Rule 31 create a burden on our mediators, it will also have a potential negative impact on several other services offered by FSCC in Pinal County, including Expedited Services, Decree Assistance Program and Establishment and Modification Assistance Program.

I ask that the Committee continue to exempt the mediators employed, appointed or referred to by the courts to serve as mediators at the direction of the courts and not require them to be licensed attorneys or document prepares.

Respectfully,

Hon. Daniel A. Washburn