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9 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

10 In the Matter of:

11 **PETITION TO AMEND RULE 74 OF**  
12 **THE ARIZONA RULES OF FAMILY**  
13 **LAW PROCEDURE**

Supreme Court No.R-15-0006

**COMMENT TO PROPOSED**  
**AMENDMENTS TO RULE 74,**  
**ARFLP, CONCERNING**  
**PARENTING COORDINATION**

14 The undersigned are attorneys and parenting coordinators in Maricopa County,  
15 Arizona. We submit the following comments in opposition to many of the proposed  
16 amendments to Rule 74, Arizona Rules of Family Law Procedure, as proposed in the  
17 Petition filed January 8, 2015.

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19 **BACKGROUND.**

20 As three experienced family law attorneys we feel a particular obligation to  
21 comment on these proposed rule changes.

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23 While Ms. Wolf no longer engages in the litigation practice of family law, she has  
24 been an attorney focusing her work efforts on family law for over 34 years. In addition,  
25 Ms. Wolf has a 1975 doctorate in psychology, with an emphasis on child psychology,  
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1 which has given her unique qualifications to serve as a parenting coordinator (formerly a  
2 family court advisor). Ms. Wolf has worked with families and children since she began  
3 her graduate studies in psychology in 1969. Ms. Wolf has been licensed to practice law  
4 in Arizona since 1985 (previously in Minnesota in 1980). Ms. Wolf has been a judge *pro*  
5 *tempore* in Maricopa County for over 25 years; she chaired the Maricopa County Family  
6 Law Section, the American Bar Association Dispute Resolution Section; and she is an  
7 advanced practitioner member of the Association of Conflict Resolution. Ms. Wolf has  
8 served as a parenting coordinator (or family court advisor) for dozens of families in  
9 Maricopa County since the enactment of the rules creating such a role.  
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12 Mr. Gallios too has extensive experience as a family law lawyer over the last thirty  
13 (30) years. Since Mr. Gallios completed law school in 1985, he has worked with  
14 hundreds of divorcing families in Arizona as an attorney, mediator, arbitrator and special  
15 master. Mr. Gallios also has considerable experience serving as a parenting coordinator.  
16 He has been a judge *pro tempore* in Maricopa County since 1993; is a Fellow of the  
17 American Academy of Matrimonial Lawyers; served as a member of the Executive  
18 Council of the Family Law Section of the State Bar of Arizona from 1995-2010; and has  
19 been a Certified Family Law Specialist in Arizona since 1999.  
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22 Ms. Paus as well is an exceptionally experienced family law attorney, practicing  
23 family law in Arizona and Kansas for eighteen (18) years. She has a large parenting  
24 coordinator caseload and is a mediator, arbitrator, part-time litigator, judge *pro tempore*,  
25 and Collaborative Divorce professional, having served as a board member of  
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1 Collaborative Divorce Professionals of Arizona. Ms. Paus also acts as a Best Interest  
2 Attorney and an attorney for children. Her Collaborative Divorce and advanced  
3 mediation training has assisted her in knowing and understanding the legal process from  
4 the child's perspective and proper communication methods for parents.  
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6 We have delineated our vast experience (collectively, in excess of 80 years) in  
7 order to show the Committee that we have worked in the trenches and have considerable  
8 knowledge about the true workings of the parenting coordinator role.  
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10 **COMMENTS ABOUT THE PROPOSED CHANGES TO RULE 74.**

11 A. Category of Issues Raised by Constituents

- 12 1. Scope of authority of parenting coordinators
- 13 2. Qualifications of parenting coordinators
- 14 3. Lack of recourse/appeal process for litigants
- 15 4. Parent Coordinator Fees

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17 B. Problems with proposed changes to Rule 74: We have elected to point out  
18 only the problems, as we see them. The Committee may therefore assume that we are  
19 either neutral or supportive of any other proposed changes to the Rule.  
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21 I. Appointment of the Parenting Coordinator.

22 Section (B) requires the court to "give the parties the opportunity to identify a  
23 person instead of a parenting coordinator with appropriate education, experience, and  
24 expertise to whom they both agree to submit any future disputes regarding the  
25 implementation of the parenting plan or legal decision-making orders." It is assumed that  
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1 the person described in this paragraph is not a parenting coordinator and will not serve in  
2 the role of a parenting coordinator; however, this language makes it unclear. If this other  
3 person is not a parenting coordinator, then why is this language in Rule 74? There is a  
4 likelihood of confusion for a non-parenting coordinator to be “appointed” in this fashion  
5 – which raises the question – would this person be appointed, or is this a friend or clergy  
6 member who helps the family reach resolution? What if they are unsuccessful reaching  
7 resolution? What if they are successful?  
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10 II. Reappointment of the Parenting Coordinator.

11 Section (E)(2) regarding reappointment provides for the parenting coordinator to  
12 contact the court in writing to request reappointment or notify the court about expiration  
13 of the term. It does not allow for the parenting coordinator to contact the parties to “seek  
14 or suggest reappointment.” While we understand the parents should not feel pressured by  
15 their parenting coordinator to support reappointment, there are difficulties caused by this  
16 rule change.  
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18 The practical reality of this is if parties are not represented by counsel, they often  
19 do not know how to make a request to the court for reappointment. The original  
20 appointment would have been either by a judge at a hearing when the parties are not  
21 represented or the parties had counsel, but counsel withdrew when the parenting  
22 coordinator was appointed.  
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1           It would be helpful to self-represented litigants to have notice of expiration in  
2 advance of same filed by the parenting coordinator, and a form at the self-service center  
3 to request reappointment.  
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5           III.    Scope of Authority Issues.

6           Newly proposed Section H is a substantial problem. This section deletes some of  
7 the most important language in current Rule 74. Under current Rule 74, the parenting  
8 coordinator does not have authority to recommend a change of custody (now legal  
9 decision-making) or a substantial change of parenting time. That prohibition continues  
10 under the revisions and that is appropriate. However, under the proposed Rule 74,  
11 descriptions of not only what the parenting coordinator may not do, but descriptions of  
12 what a parenting coordinator may do, have been eliminated. That would seem to be a  
13 direct contradiction to the fourth stated purpose of the proposed changes; to clarify the  
14 “scope of authority of parenting coordinators.” There is no stated reason for this deletion  
15 and will likely cause uncertainty for parties.  
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18           While it is possible that someone on the Committee believed that stating some –  
19 but perhaps not every possible – endorsed action acceptable for a parenting coordinator  
20 was misleading, saying nothing concrete about the scope of authority is even worse. The  
21 original language was very helpful to litigants in understanding what a parenting  
22 coordinator may and may not do. This language should not be deleted.  
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1 IV. Obtaining Documents.

2 Proposed new Section K requires that the parenting coordinator notify the Court  
3 before speaking with or obtaining documents from third parties. Again, this proposal  
4 would appear to be a direct contradiction to a stated purpose of the proposed revisions:  
5 Parenting Coordinator Fees. (It is proposed, under the same provision, that the parenting  
6 coordinator also notify the parents of such intent and, although that may increase expense  
7 slightly, it seems to be a reasonable addition).  
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10 If the parenting coordinator is forced to file a pleading with the Court informing  
11 the judge that the parenting coordinator will be seeking information from a third party,  
12 the litigant will be charged for the preparation of that pleading. This will add additional  
13 expense for each parent. Then, it is unclear in the proposed rule changes, what will be  
14 the Court's obligation? Must the Court "rule" on the notification? Should the Court set a  
15 hearing on the notification if a litigant objects? None of that is addressed in the proposed  
16 changes to Rule 74 and obviously, each and every one of those activities will increase  
17 expense for the parents. It will also likely cause delay.  
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20 V. Objection Process.

21 The changes proposed to Section N dealing with litigants' right to object to  
22 recommendations of the parenting coordinator are a problem. This is actually one of the  
23 more egregious deletions. In current Rule 74, a hearing will be set by the court if the  
24 objecting party requests one. The proposed changes delete the requirement for the court  
25 to set a hearing, thus eliminating a party's opportunity to be heard by the judge. This  
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1 would appear to be a direct contradiction to the second stated purpose of the proposed  
2 changes: “lack of recourse/appeal process for litigants.” The Rule should maintain a  
3 stated objection period, provide the avenue for objecting and should continue to mandate  
4 that the court set a hearing if the litigant requests one.  
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6 VI. Parenting Coordinator Fees.

7 The proposed amendments to Section F(2) allow a parenting coordinator to  
8 recommend an adjustment to the Court’s allocation of fees. In Orders of Appointment,  
9 the Court orders a percentage allocation between the parents of the parenting  
10 coordinator’s fees. The current version of the parenting coordinator Order of  
11 Appointment makes it clear that a parenting coordinator may only recommend a  
12 reallocation of fees which is different than the Court’s ordered allocation of fees if the  
13 parenting coordinator, “determine(s) that one of the parties is using his/her services  
14 unnecessarily and is thereby causing greater expense for the other party as the result  
15 thereof.” The proposed language suggests the parenting coordinator would have the  
16 power to reallocate his/her fees based on a party’s ability to pay. That would imply the  
17 parenting coordinator has been given information about the parties’ financial resources,  
18 however, there is no instruction as to how the parenting coordinator would even possess  
19 such information from the parties. It is also important to note that, typically, the  
20 parenting coordinator is not provided, nor do they (currently) need to be provided,  
21 information on the parties’ financial resources.  
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1           If it is the intent of the proposed amendments to Rule 74 for the parenting  
2 coordinator to review information on the parties' financial resources so as to make  
3 recommendations on the reallocation of fees, then the result will be not only an expansion  
4 of the parenting coordinator's scope of authority, but in requiring the parenting  
5 coordinator to review the financial resources of the parties, there will be an increase in  
6 the parenting coordinator's fees. We believe this is contrary to the objective of the  
7 proposed amendments. It is probably also an inappropriate delegation of authority and,  
8 in some situations, requires a parenting coordinator who has no legal background and no  
9 experience in determining the incomes of the parties to make a determination on parties'  
10 incomes. This proposed amendment would appear to be in distinct opposition to the  
11 stated purposes of the proposed amendments, both category 1 and category 4. A better  
12 approach is to simply incorporate into Rule 74 language from the Order of Appointment  
13 which provides for the reallocation of fees if the parenting coordinator, "determine(s) that  
14 one of the parties is using his/her services unnecessarily and is thereby causing greater  
15 expense for the other party as the result thereof."

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20           In Section F(3), the proposed amendments create a variety of problems. In  
21 particular, the suggestion that a total retainer taken by the parenting coordinator be  
22 limited to no more than two times the parenting coordinator's hourly rate appears to be  
23 based on mistaken assumptions. First, if the provision was suggested under the  
24 assumption that most parenting coordinator cases involve two hours of work or less, that  
25 assumption is incorrect. Often, in order to fully understand the disputed issue, the  
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1 parenting coordinator is required to meet with each party for at least an hour, resulting in  
2 two hours total. If the parenting coordinator must then require the parties to supplement  
3 the retainer before the parenting coordinator writes his or her report, that will defeat  
4 another objective of the parenting coordinator process, which is to obtain a prompt  
5 resolution of the dispute.  
6

7 In addition to meeting or communicating with the parties, often the parenting  
8 coordinator is required to review past communication between the parties, and to  
9 sometimes communicate with third parties, such as school officials, medical care  
10 providers or therapists. The two hour retainer limit may create a situation where the  
11 parenting coordinator meets with each party for an hour but, if the parties fail to replenish  
12 their retainer as requested by the parenting coordinator, the initial retainer will have  
13 essentially been wasted. The two hour retainer limit also invites unnecessary additional  
14 administration by the parenting coordinator. This additional administration may cause  
15 many professionals to simply stop doing parenting coordinator work. Fewer  
16 professionals doing parenting coordinator work will result in less competition among  
17 professionals and likely higher hourly rates of the professionals who do choose to stay  
18 involved.  
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## 22 **CONCLUSORY COMMENTS**

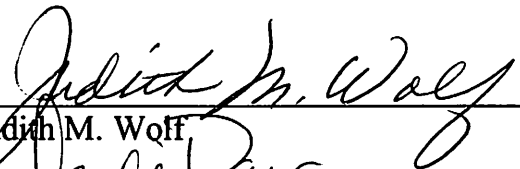
23 We believe it is very important to consider the practical realities of the rule  
24 changes before implementing any change. While we support many of the concepts for  
25 change or clarification in the proposed rule, many of the proposed changes will result in  
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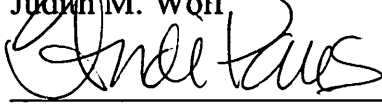
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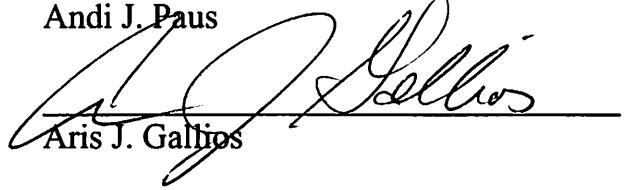
more cost for the parties, less choice in selecting a parenting coordinator, less ability to have the court hear objections, or other negative results.

**RESPECTFULLY SUBMITTED** this 17 day of April, 2015.

**ARIZONA MEDIATION INSTITUTE**

  
\_\_\_\_\_  
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