

1 Honorable Janet E. Barton  
2 Associate Presiding Judge  
3 Superior Court of Arizona, Maricopa County  
4 125 W. Washington St.  
5 Phoenix, AZ 85003  
6 (602) 506-5340

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of: } Supreme Court No. R-15-0018  
PETITION TO AMEND RULES 31, } COMMENT OF THE SUPERIOR  
34, 39, AND 42 OF THE RULES OF } COURT OF ARIZONA, MARICOPA  
THE SUPREME COURT } COUNTY REGARDING PETITION  
TO AMEND RULE 31 OF THE  
RULES OF THE SUPREME COURT

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The Associate Presiding Judge of the Superior Court in Maricopa County files the following comment pursuant to Rule 28, Arizona Rules of the Supreme Court, regarding the petition to amend Rule 31 of the Rules of the Supreme Court. The petition proposes many changes to the Rules Governing Professional Conduct and the Practice of Law, including the provision to require mediators who are not members of the State Bar and who prepare mediation agreements to be certified legal document preparers.

Under the current version of Rule 31, non-attorney mediators are allowed to draft a mediated agreement and file it with the court, as long as the mediator is employed, appointed, or referred by the court or a government entity and is serving as a mediator at the direction of the court or government entity. The rule petition provides no reason for changing this practice and the Superior Court is not aware of any issues from allowing non-attorney mediators to serve in this role at the direction of the court or a government entity.

1           When considering this petition, the Superior Court respectfully requests  
2 the Supreme Court continue the current exemption or include a specific  
3 exemption for court staff and those appointed by the court. The amendments to  
4 Rule 31, as proposed, would result in a significant impact on the Superior Court.

5           The Family Court Department in the Superior Court in Maricopa County  
6 employs six Family Law Case Managers, ten Conference Officers, and eight  
7 Conciliators. These are professional employees who prepare mediation  
8 agreements at the direction of the court. Family Law Case Managers must have  
9 a law degree, Conference Officers must have at least a bachelor's degree, and  
10 Conciliators are required to have a master's degree. In addition to the  
11 educational requirements, these employees have considerable training, including  
12 two to four months of shadowing others in those positions. Once trained, these  
13 employees provide a variety of services that often result in mediation  
14 agreements, such as early resolution conferences and conciliation services. In  
15 fiscal year 2014, the Superior Court in Maricopa County conducted 2,232  
16 mediation conferences, 3,825 early resolution conferences, and 2,330  
17 enforcement conferences. A substantial number of these conferences result in  
18 partial, if not full, agreements. For example, 90% of the Early Resolution  
19 Conferences conducted by our court last year resulted in at least a partial  
20 agreement. Without having court staff able to conduct these conferences, the  
21 parties would be forced to wait for an available court date –increasing already  
22 packed family court dockets.

23           Forcing these employees to become certified legal document preparers  
24 would create an unfunded mandate for the court and take significant time for  
25 each new employee–up to a year. The alternative would be to change the  
26 requirements for these positions for new hires to include being a member of the  
27 State Bar or a certified legal document preparer, which could result in a smaller  
28 pool of applicants and increased time to fill the positions.

1 In addition, the Superior Court is concerned that having these employees  
2 be certified legal document preparers to prepare mediation agreements to be  
3 filed in our court raises unnecessary ethical concerns. Arizona Supreme Court  
4 Judicial Ethics Advisory Opinion 03-07 provides in part that “ethical concerns  
5 generally will preclude a CLDP/court employee from providing or preparing any  
6 legal documents when their filing or use in proceedings before his or her court is  
7 likely or distinctly possible.” Although this ethics opinion specifically addresses  
8 secondary employment as a certified legal document preparer, many of the  
9 ethical issues would apply to having court employees prepare mediation  
10 agreements as certified legal document preparers, rather than simply as court  
11 employees who are performing tasks under the direct supervision of the court.

12 The Superior Court does receive an occasional complaint about a Family  
13 Law Case Manager, Conference Officer, or Conciliator. However, virtually  
14 none of these complaints deal with the documents generated following a  
15 mediation or conference. In addition, these individuals receive direct oversight  
16 from court administration and indirect oversight from the bench because the  
17 bench reviews many of the documents these individuals prepare, and as a result,  
18 litigants will receive no additional protection or safeguards by requiring these  
19 individuals to be certified legal document preparers.

20 Without a demonstrated need for rule change regarding court-employed  
21 mediators, the Superior Court in Maricopa County respectfully requests the  
22 Supreme Court continue the current exemption or include a specific exemption  
23 for court staff and those appointed by the court. If the Supreme Court believes  
24 the currently proposed changes regarding mediators must also apply to non-  
25 attorney mediators to serve in this role at the direction of the court or a  
26 government entity, the Superior Court requests a delayed effective date of at  
27 least one year to allow the Superior Court time to obtain the budget necessary for  
28 these changes and time for these employees to obtain certification.

1 Respectfully submitted this 22nd day of April, 2015.

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3 /s/ Janet E. Barton

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Hon. Janet E. Barton  
5 Associate Presiding Judge  
6 Superior Court of Arizona, Maricopa County

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8 Electronic copy filed with the Clerk  
9 of the Supreme Court of Arizona  
10 this 22nd day of April, 2015.

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