

1 April 24, 2015

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3 In the Matter of: )

4 **PETITION TO AMEND RULE 74)** 10

5 **OF THE ARIZONA RULES OF )** 11 Supreme Court Number R-15-0006

6 **FAMILY LAW PROCEDURE )** 12 **COMMENT TO PROPOSED**  
7 13 **AMENDMENTS TO RULE 74, ARFLP,**  
8 14 **CONCERNING PARENTING**  
9 15 **COORDINATION**

16 **BACKGROUND**

17 I am physician and am licensed to practice medicine by the Arizona Medical Board, State  
18 of Arizona. I am doubly board certified: I am Board Certified in Psychiatry, and in Child and  
19 Adolescent Psychiatry by the American Board of Psychiatry and Neurology, Inc. I am a  
20 Distinguished Life Fellow of the American Psychiatric Association and a Distinguished Fellow  
21 of the American Academy of Child and Adolescent Psychiatry. I have practiced medicine for 39  
22 years. I trained in pediatrics at the University of Illinois at the Medical Center, Chicago. I trained  
23 in Psychiatry at Dartmouth Medical School and in Child and Adolescent Psychiatry at the  
24 Medical College of Virginia. I am a former president of the Phoenix Psychiatric Society. For 30  
25 years I have been in the private practice of adult psychiatry, and child and adolescent psychiatry  
26 in Phoenix, Arizona. This has not only included providing psychotherapy and psycho-  
27 pharmacologic treatment for patients, but also a forensic consulting practice. For more than a  
28 quarter century I was a psychiatric consultant for the Division of Children, Youth and Families  
29 of the Arizona Department of Economic Security (nka Department of Child Safety), and for the  
30 section of the Arizona Attorney General which advises that agency. I have also served as a court  
31 appointed evaluator in approximately 400 high conflict child custody cases and provided  
32 testimony in the Superior Court of Arizona in and for the County of Maricopa. Currently I am  
33 the only psychiatrist approved by the Court to perform comprehensive family assessments (to  
34 recommend decisional authority and parenting time [custody and “visitation”]) on its Behavioral  
35 Health Provider Roster. As well I perform Independent Psychiatric Examinations where one

1 parent in a custody dispute is identified as the examinee. I have never been appointed a Parenting  
2 Coordinator under Rule 74, A.R.F.L.P., have never been available for such appointment and  
3 have no plans to make myself available for same.

4 **COMMENTS**

5 The proposed changes to Rule 74 will have paradoxically adverse consequences and  
6 make it more difficult, I believe, for those of us who, upon appointment, provide the Court with  
7 Comprehensive Family Assessment (CFAs) and Limited Family Assessments (LFAs) to make  
8 recommendations to the Court which will help it fulfill the spirit of ARS § 25-103 particularly  
9 subsection (B)(2)., without compromising the best interest of the child, viz.,

10 ARS § 25-103. Purposes of title; application of title

11 A. It is declared that the public policy of this state and the general purposes of this title are:

- 12 1. To promote strong families;
- 13 2. To promote strong family values.

14 B. It also is the declared public policy of this state and the general purpose of this title that absent evidence to the  
15 contrary, it is in a child's best interest:

- 16 1. To have substantial, frequent, meaningful and continuing parenting time with both parents.
- 17 2. To have both parents participate in decision-making about the child.

18 C. A court shall apply the provisions of this title in a manner that is consistent with this section.

19 When I conclude an assessment and develop a parenting plan recommendation, I keep in  
20 mind and comment on

21 ARS § 25-403.01. Sole and joint legal decision-making and parenting time

22 A. In awarding legal decision-making, the court may order sole legal decision-making or joint legal decision-  
23 making.

24 B. In determining the level of decision-making that is in the child's best interests, the court shall consider the factors  
25 prescribed in section 25-403, subsection A and all of the following:

- 26 1. The agreement or lack of an agreement by the parents regarding joint legal decision-making.
- 27 2. Whether a parent's lack of an agreement is unreasonable or is influenced by an issue not related to the child's best  
28 interests.
- 29 3. The past, present and future abilities of the parents to cooperate in decision-making about the child to the extent  
30 required by the order of joint legal decision-making.
- 31 4. Whether the joint legal decision-making arrangement is logistically possible.

32 C. An order for sole legal decision-making does not allow the parent designated as sole legal decision-maker to alter

1 unilaterally a court-ordered parenting time plan.

2 D. A parent who is not granted sole or joint legal decision-making is entitled to reasonable parenting time to ensure  
3 that the minor child has substantial, frequent, meaningful and continuing contact with the parent unless the court  
4 finds, after a hearing, that parenting time would endanger the child's physical, mental, moral or emotional health.

5 ARS § 25-403.1 (B)(3) requires careful consideration of three time periods. This is  
6 complicated enough to weigh. The parties may think in terms of duration, convenience and  
7 whether or not there will be ongoing conflict. However my expertise is to consider what impact  
8 the parenting plan will have on each future epoch of development in the child(ren)'s life. The  
9 necessary abilities of the parents to cooperate in decision-making for a toddler are different from  
10 those needed for a middle school child, much less from a 16 year old.

11 The dilemma of course is that I will have been appointed in cases which, for the most  
12 part, are considered "high conflict." Two of the three time periods (past and present) listed in 25-  
13 403.1 (B)(3) may already indicate poor abilities to cooperate. In considering whether joint legal-  
14 decision making is in the best interest of the child, developmentally, I need to find data that the  
15 parents' better judgments and concern for the child(ren)'s best interests will survive the  
16 dissolution or rise from its ashes. At best my assessments might indicate sufficient maturity and  
17 absence of significant mental disturbance in each parent to make such a outcome possible,  
18 maybe even likely. At other times I will decide that successful co-parenting odds are poor but  
19 will be greatly improved through the appointment of a Parenting Coordinator. [Parenting  
20 Coordinator services also are needed when there is sole decisional authority but parenting time  
21 changes are built into the parenting plan (*e.g.*, once certain "milestones" are reached), but I will  
22 not discuss this for sake of brevity.]

23 Simply put, the changes proposed to R. 74, ARFLP will significantly alter the role of the  
24 Parenting Coordinator, raise costs while making it more difficult for the Parenting Coordinator to  
25 investigate all avenues of information and data necessary to do their job (due to limitations on  
26 prepayment amounts). Allowing non-Parenting Coordinators who are somehow still qualified,  
27 but unappointed, yet require the approval of each of the parties who have just concluded  
28 litigation opens up a great deal of uncertainty as to whether the process will even get started  
29 expeditiously. I am in agreement with the comments of others (Annette T. Burns, *Esquire*; the

1 Arizona Mediation Institute and the American Academy of Matrimonial Lawyers) regarding the  
2 detail of the problems with the proposed changes.

3 From where I sit and practice, were the proposed changes to Rule 74, A.R.F.L.P. be  
4 adopted, professionals upon whom I depend to be competent Parenting Coordinators, including  
5 those whom I do not know personally, will no longer accept appointment, will have their roles  
6 weakened, will become unable to function efficiently and paradoxically will be cost prohibitive  
7 in the final accounting. If I cannot depend on the knowledge that only by working with a  
8 Parenting Coordinator whose role is described under the present Rule 74 can parents with  
9 “borderline” skills be able to cooperatively protect, nurture, socialize, and enhance the lives of  
10 their children then the obvious and developmentally sound conclusion will be for me to  
11 recommend sole legal decision-making.

12 ARS § 25-103 addresses strong families, strong family values and the best interests of  
13 children. This guides my assessments and recommendations. If an individual feels wronged by a  
14 Parenting Coordinator there are other avenues of redress.

15 **RESPECTFULLY SUBMITTED** this 24<sup>th</sup> day of April, 2015.

17 /s/JOHN V. SCIALLI, M.D.

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