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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of **PETITION TO AMEND RULE 74 OF THE ARIZONA RULES OF FAMILY LAW PROCEDURE.**	**Supreme Court Number R-15-0006** **COMMENT TO PROPOSED AMENDMENTS TO RULE 74, ARFLP, CONCERNING PARENTING COORDINATION**

The undersigned, parent and engineer and party to family court proceedings and victim of unethical and abusive conduct by parenting coordinators in Maricopa County, Arizona, submits the following comments opposing many of the proposed changes to Rule 74, Arizona Rules of Family Law Procedure, as proposed in the Petition filed January 8, 2015.

BACKGROUND.

I am commenting on this proposed Rule change because I am a parent and party in Family Court and have suffered under the unethical, incompetent, and abusive conduct of multiple parenting coordinators whose appointment and involvement served to worsen conflict and provided no benefit to any party except to the judge, who was able to shirk his responsibilities, and the

parenting coordinators, who charged exorbitantly with no definable benefit and certainly nothing positive worthy of the time, money, and emotional pain inflicted upon the parties.

COMMENTS ABOUT THE PROPOSED CHANGES.

It appears that the purpose of the 2014 Workgroup regarding Rule 74 was to address litigant concerns about ***PC fees, lack of recourse/ appeal process, qualifications of PCs, and scope of authority.*** (See the Petition to Amend filed 1/8/2015, page 2) Judge Barton, chair of that Workgroup, reported that there were four to six complaints from litigants that led to the formation of the Workgroup. [Email from Judge Barton to Family Law Executive Council and American Academy of Matrimonial Lawyers, Arizona Chapter, dated December 6, 2014] It is important to understand the incredible bravery of the litigants in coming forward, knowing the potential for severe ramifications from their Family Court judge. Family Court exists with extremely lax rules that do little to protect the rights of parties and children but instead usurp parents' authority into the hands of a judge who is in all practicality unaccountable. Who has $50,000 lying around to appeal a judge's decision especially knowing that the same judge will then have the case returned to his/her jurisdiction where he can do basically what he/she wants to retaliate being questioned?

I am in agreement with attorney Annette Burns that it appears that many of the proposed changes to the Rule do not relate to any of the stated goals. Interestingly, it appears that most of the changes instead remove what few protections exist in the rule for parties and instead give judges and PCs freer hand to victimize for profit parties involved in Family Court.

1. The proposed change to Section B: While there is a vehicle for potentially the same use of someone not on the Parenting Coordinator list, this is in practice discouraged and refused by Family Court judges. Despite a degree of some kind awarded by some

university at some time, the PCs with which I've been inflicted have shown no evidence in their behavior that they possess superior skills than anyone else.

2. The proposed change to Section E: It is a deep conflict of interest for a PC to be allowed to request reappointment.
3. The proposed change to Section F: Completely appropriate. The current profit focus over performance by PCs in my opinion is at the root of what is broken about the PC process. A PC billing so extensively that a 2 hour retainer limit is a burden clearly is not focused on helping but instead is focused on grabbing as much cash as possible. The vast majority of issues brought to a PC are of routine nature, easily decidable, and simply a result of PCs' desire for profit aligning with the party with lower attributed earning using the PC as a financial weapon.
4. The proposed change to Section H: Opposed. This change would remove some of the most helpful language for a new party to Family Court. It seems more aligned with aiding PCs create dependency and increase PC profits.
5. The propose change adding Section L: This is inappropriate and would lead to mass confusion about what agreements and orders are in force.
6. The proposed change adding Section N: Opposed. The requirement to hold a hearing is one of the few due process protections Family Court bothers to recognize. Removing the right to hearing is completely unconstitutional and only serves the convenience of judges and PCs, not children or their parents.

RECOMMENDATIONS FOR CHANGES NOT PROPOSED BY THE ADHOC WORKGROUP

A key problem with the current Parenting Coordinator position and practice is that there are no real protections for parties against abuse, especially early in the case history when children are young and potential commentary by the PC can have long-lasting negative effects on a parent's life with their children. I assert that the key need of a right revision of Rule 74 must focus on reducing the latitude and authority of PCs, thereby reducing the tools so many PCs use to drive up costs.

Some recommended changes to reduce the ability of PCs to abuse the authority granted them and drive up costs for their own benefit:

1. *Explicitly enumerate in the Rule that any party or participant in the PC process has the explicit and irrevocable right to record any session, proceeding, or other contact*. It is a common tactic of parenting coordinators to require parties to sign a participation agreement that includes a clause forbidding recording of any session. This is in fact contrary to standard appointment orders in Maricopa that allow recording upon request to the PC. But PCs are left by the appointing judges almost completely unsupervised in any practical way, so this negation of the provision in rule is allowed to go on. And what parent would risk angering a judge, especially when family court judges wield such broad and, for all practical purposes, unchecked power? The widespread abuse of due process in family court such as improper restricting of hearing duration exemplifies the risk to any parent who stands up for their rights against the judge's favored, appointed PC, and is likely to be labeled a "troublemaker" and suffer in subsequent decisions. Having objective evidence such as recordings would greatly empower a party to bring misconduct to light on the record. Currently it is the party's word against a person the Court appointed and assumes by possession of some college degree or

another that the person is both ethical and capable. And ethical and capable PC should be happy to have an objective record of their conduct. The standard claim that privacy is required to allow the parties to speak freely is completely hollow, especially considering that no form of therapy is being performed in the PC process. In fact, the average PC session in my experience is little more than a browbeating full of arrogance by the PC and lacking any hint of professional training or judgement. The fact that these people have had degrees conferred upon them is completely undetectable in the often heavy-handed and inept sessions over which they govern.

The second PC appointed in my case is a very old man with a psychology degree who often confuses what was said in meetings. He would often make statements in meetings and then take actions or make reports that utterly contradicted the facts of the session. Having an irrevocable right to record would have provided an objective record to correct the chaos his actions created and provided the building blocks to have him removed from the case and from the PC list as well.

Further, this second PC has made several blatant and unethical threats toward me, including threatening to baselessly recommend to the Court that my son be sent to an out-of-state facility if I did not rubberstamp every decision of the Therapeutic Interventionist he recommended and who he regularly recommends for any available position in cases to which he is appointed. Without a recording -- because the rules he forces upon parties agree to no recording -- it would simply be my word against his. And as this PC constantly says, the judge in our case and most judges will simply accept what the PC says or recommends.

An explicit and irrevocable right by all parties and participants in the PC process to record all sessions and interactions is key to bringing real accountability to the many unethical and arrogant PCs making huge sums of money off the misery of parties in Family Court.

2. *Require that the Court maintain accurate, easily available records for each PC of complaints and actual disciplinary actions.* Currently the Court simply lists PCs who have completed a superficial class. There is no information whatsoever to gauge the effectiveness of the PC or whether they have been subject to complaints or disciplinary action. Most parties in Family Court are completely unfamiliar with resources that might give insight into the behavior of a particular provider on the PC list. Unfortunately, the attorneys with whom I am familiar or have been informed about by colleagues in general are at best unhelpful in informing their client about the characteristics of a PC. And once appointed, a party seeks removal of a PC only at great risk, the attorneys will say. In effect, the appointment of a PC is done in the dark and with little to no ability to correct a bad appointment. Parties need more information to make firsthand choices without being crippled by their attorney's shortcomings. Given that appointment of a PC in practice is a process forced upon at least one party against their will, it should be the responsibility of the Court to provide full and accurate information about the people it is forcing upon the parties.
3. *Create and maintain a public system of reviews of PCs.* In my experience, a PC is forced upon at least one unwilling party in a Family Court case. Often the other party is happy for the appointment and intends to use the PC as a means to lash out at the other

and to use the disparity in costs share as a weapon. Unfortunately, the PCs that have been imposed in my case have been all too willing to participate, and at great cost mentally, physically, and financially have made our situation worse, not better, as they encourage use of their services to increase their billable hours. During the appointment process it is difficult if not impossible for a party to get accurate, actionable information about a given PC, and so must trust blindly in the opinion of their attorney, who often is personally involved socially with the PCs on the list and does not disclose it to their client. As mentioned above, judges provide no practical oversight of PCs and the fear of angering a Family Court judge who wields vast powers that are in all practical senses unchecked prevents many from speaking out. PCs complete the circle of misery by often forbidding recording sessions so there is no evidence of their misconduct. Having a review system would potentially aid in exposing the more egregiously inept and unethical PCs and help parties avoid using them.

4. *Require a minimum 30% cost share.* The PC process is often used by the lower earning party as a financial weapon. In theory the appointing judge can and should thoughtfully determine a cost share in each circumstance. In practice, Family Court judges take the road of least resistance and simply repeat the cost share calculated in the child support calculation. When there is a large disparity in earning, the party attributed with the lower earnings uses the PCs service essentially for free. One could claim that being the lower earner the party has fewer resources. In practice it is understood that such a person has access to a large amount of financial resources through parents, a new spouse, or friends. In my own case the PC process was regularly used as an essentially

no-cost weapon to harass me. Our first PC did all business through email, and she allowed the mother to write virtually unlimited complaints. I would literally be copied on or directly receive 10-20 emails per day, all billed for by the PC, and then be threatened with disciplinary action by the PC for not responding immediately to each one. I have a job during the day! I would be fired if I did so! Yet this PC, a female attorney with a long history of being a PC in Maricopa County, continued this unethical behavior for months. I found out after the appointment lapsed that this PC had also been having ex parte communications with the other party in violation of the appointment order...and this woman was considered one of the best PCs! She did nothing to limit conflict and in fact worsened it by providing an essentially unlimited venue for the mother to complain about every perceived slight and non-compliance on my part. Her tenure as PC made the co-parenting relationship far worse than it would have been without here involvement.

Our second PC is a very old man with a psychology degree who is also purportedly a well-respected member of the PC group. His involvement as well served only to encourage rapid-fire complaints from the mother, who was attributed with substantially lower income despite many elements that should have led the judge to impute substantial income. Had a cost share of 30% or more been imposed on the mother, her groundless, vicious escapades to the PC would have been reduced substantially.

5. Limit appointment of a PC to 1 year and require clear and convincing evidence of benefit to children for reappointment. PCs are in practice used by Family Court judges to avoid dealing with the issues between the parties. Rather than improving interaction

between the parties, most PC use results in the use of the process by the party with lower attributed earning as a financial weapon to strike at the other. PCs encourage frequent use of their services to greatly profit off of this misery, and in practice Family Court judges provide no real oversight of the conduct of PCs. The rule should require limiting appointments to 1 year and requiring that clear and convincing evidence of benefit to the children from the previous appointment before reappointment for a year. If clear and convincing evidence of benefit to the children cannot be shown, then the PC serves no purpose for which the Court should employ under the Family Court's mandate. The cost of the PC is inherently a detriment to the children, so that cost should be outweighed by some provable, substantial benefit.

6. *Require that the appointment of a PC may only occur by agreement of the parties unless an evidentiary hearing on the specific benefits and the specific qualifications of the proposed PC is heard*. It is pro forma for Family Court judges to appoint PCs when faced with parties whose conflict they don't want to deal with. The involvement of the PC often worsens conflict by providing a low-cost venue to frequently harass the party with higher attributed earning. There is no practical oversight by the courts, as exemplified by the common comment from PCs that the court will simply agree to anything the PC says or recommends.

   For parties in conflict, a PC will only be of practical help if the parties agree it will be helpful without specific or implied coercion from the Court or attorneys. If the Court still feels that there is a real benefit to the well-being of the children and not simply a convenient diversion by the Court of issues it prefers not to deal with, then an

evidentiary hearing should be required to justify the desired outcome of such an appointment and to hear evidence on whether or not the proposed PC would likely accomplish those ends.

7. *Limit fees and require billing to be on a fee-per-session basis.* In practice, a PC's appointment is highly profitable and has no practical oversight, especially when the parties are inexperienced in the Family Court process and politics. The claim is made that the PCs possession of a college degree in psychology or law somehow assures that they are uniquely skilled to aid the parties. In my practical experience, nothing could be farther from the truth. Meetings in the history of my case have been fruitless and lacked any proof of professional skill on the part of the PC. Both PCs in fact more closely resembled a disgruntled and arrogant neighbor who ignores facts, has a favorite in the fight, and has they happy fortune of being able to charge practically unlimited costs since judges take no active role in policing PCs. They did not function as skilled counselors or law masters. The PCs in my case have billed for hundreds of hours, and provided no provable benefit. More truly they have encouraged conflict to increase their own profits.

   A practical brake on this, since no help from the judge could be counted on, would be to limit their potential profits. Specifically, the Court should require that those serving as PCs agree to a minimal, fixed fee structure, and that a PC agree to charge a single fee for a single issue.

   The argument has been made in other comments that this is illegal interference in a contractual relationship. I vehemently disagree. The appointment of a PC is in practice

forced upon at least one unwilling party under duress through specific or implied threat if opposition is given. Attorneys commonly reinforce that retribution by the judge is likely if appointment of a PC is fought. Contract law requires both parties to the contractual relationship participate freely and with full knowledge of the scope of the relationship. Nothing could be further from the truth with a court-appointed PC. Service as a PC is an act of freewill that already comes with forced requirements, such as the mandatory if superficial required course. Requiring PCs to limit the amount and frequency of billing is completely reasonable. If the PC does not agree, they can go seek another source of profiting from misery.

CONCLUSION

The proposed changes to Rule 74 do little to accomplish what should be their goal: To protect the rights of parties in Family Court against the egregious profiteering conduct of the many PCs who use their connections and experience to victimize the parties who are already in great turmoil and who do not have the knowledge or experience to fully protect their rights.

The best outcome, in fact, would be to eliminate the text of Rule 74 in its entirety and instead require compliance with Rule 53 of the Rules of Civil Procedure, which governs the appointment of "Masters". Given the rampant abuse for profit of the PC system and its use by judges to avoid their responsibilities, such a change is necessary and long overdue.

The importance to already suffering families in the Family Court system subjected to the tyranny of a court-appointed PC cannot be understated. As such, I urge that the Court reach out directly to EVERY party who has had an appointed PC and seek their direct and detailed testimony and recommendations. I would never have known about this process without the help of a friend,

since neither my attorney nor the Court bothered to seek my input or even make me aware of this process. Rather than spurn the involvement of those most affected by PCs, the Court should seek it actively.

RESPECTFULLY SUBMITTED this 27th day of April, 2015.

/s/ DAVID M. ALGER

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