

1 Honorable Kathleen Quigley  
2 Juvenile Court Presiding Judge  
3 Arizona Superior Court in Pima County  
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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of: } Supreme Court No. R-15-0018  
} COMMENT OF THE PIMA  
} COUNTY JUVENILE COURT  
} DIVISION OF THE ARIZONA  
} SUPERIOR COURT IN PIMA  
} COUNTY REGARDING PETITION  
} TO AMEND RULE 31 OF THE  
} RULES OF THE SUPREME COURT

The Presiding Judge of the Pima County Juvenile Court files the following comment pursuant to Rule 28, Arizona Rules of the Supreme Court, regarding the petition to amend Rule 31 of the Supreme Court. Pima County Juvenile Court is specifically concerned with the provision to require mediators who are not active members of the State Bar, or supervised by a licensed attorney and who prepare mediation agreements or draft legal documents to be certified legal document preparers. Pima County Juvenile Court does not have any objection to the provision that specifies mediation is not the practice of law. Pima County Juvenile Court shares in the concerns and reasoning outlined in the comments submitted by Maricopa and Pinal County Courts, and the Pima County Family Court. This change will have a negative impact on the families the court serves, and a hardship on both the Pima County Juvenile Court Mediation program, the individuals employed by the program, and the court itself.

1 The Pima County Juvenile Court Mediation program provides professional  
 2 court-based alternative dispute resolution (ADR) services for juvenile court  
 3 dependency and severance cases. The program also provides ADR services for  
 4 family law cases that are consolidated with juvenile court dependency cases, and  
 5 some delinquency cases. The mediation program is an integral part of the court's  
 6 case management as judges rely on mediators to conduct sessions, and to calendar  
 7 hearings and trials in cases where there are issues requiring a judicial decision  
 8 following an ADR session.

9 Court-based mediation programs are different. The chart below outlines the  
 10 types of alternative dispute resolution offered by this program:  
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<p>12 13 14 15 16</p> <p><u>Facilitated Settlement Conference</u></p>	<p>Addresses the issues of dependency adjudication and disposition.</p> <p>Note: The session may address negotiation of a parenting plan as a way to avoid the finding of dependency.</p>
<p>17 18 19 20</p> <p><u>Family Law Mediations</u></p>	<p>Addresses the issues of legal decision-making and parenting time in family law cases consolidated with juvenile dependency court cases.</p>
<p>21 22 23 24</p> <p><u>Mediations</u></p>	<p>Addresses issues as identified by the court or the parties such as visitation, services, placement, post-adoption contact, case plan goals, and revocation of Tile 8 guardianships.</p>
<p>25 26 27 28</p> <p><u>Reunification at Risk Session</u></p>	<p>In these sessions the mediator facilitates a candid discussion intended to identify barriers to reunification, plans to address those barriers, and an exploration of permanency alternatives.</p>

<u>Facilitated Case Conference</u>	Addresses the issue of termination of parental rights.
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The training, education and experience of each mediator qualifies them to draft proficient documents without the parameters proposed by the amendment to Rule 31. The Mediation program currently has four full-time mediators, and a supervisor who is also a qualified mediator. Each mediator must have either a Juris Doctorate, or a Master’s Degree with a major in social/behavioral science or other related field. All mediators have completed a basic mediation training during which drafting documents was addressed. Mediators are subject to supervision by a qualified mediator and engage in extensive training at the direction of the mediation supervisor prior to being permitted to mediate sessions on their own. Drafting quality documents and agreements is emphasized during initial and ongoing mediator training. During a mediator’s training period the mediation supervisor reviews documents and agreements drafted. Each mediator is required to attend ongoing continuing education each year to include topics of drafting documents and agreements, mediation ethics, mediation skills/practices, child welfare, domestic violence, family law, and juvenile law. The mediators comply with COJET requirements, attend court sponsored CLEs, attend trainings sponsored by the Arizona Administrative Office of the Courts, and other relevant trainings sponsored by community-based organizations. The Arizona Supreme Court already has oversight of court-employed mediators as they are subject to COJET. If there is a particular training the Arizona Supreme Court would like court-employed mediators to attend regarding drafting documents, it can be mandated through the COJET training. As opposed to the enormous costs that

1 compliance with the proposed amendment will require, COJET training is a cost-  
2 efficient way to provide ongoing training.

3 The administration of the program provides adequate oversight to assure the  
4 quality of the mediation services and document preparation without the proposed  
5 changes to Rule 31. In Pima County the mediation program is housed in the  
6 juvenile courthouse as a part of the Children and Family Services division. The  
7 program is responsible to the presiding juvenile judge, juvenile court judges who  
8 refer cases to the program, the juvenile deputy court administrator, and the  
9 Children and Family Services division director and assistant division director.

10 The presiding judge meets with the mediation supervisor and the assistant division  
11 director at least quarterly. Mediators are supervised directly by the mediation  
12 supervisor. Judges review documents and agreements drafted by a mediator filed  
13 with the court prior to being made a court order. Any orders drafted by mediators  
14 are submitted to the assigned judge for review and signature. The judge may  
15 request changes to a draft order, if necessary. Furthermore, most of the juvenile  
16 court cases involve multiple parties represented by attorneys. Attorneys  
17 participate in a majority of the juvenile court ADR sessions, and often review and  
18 sign agreements prepared by mediators.

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20 The mediation program has a well-documented positive impact on the  
21 court. The program provides cost savings, as it is more cost effective to have a  
22 mediation session than a court hearing. When a case reaches an agreement in  
23 mediation, it reduces court hearings, contested hearings and trials. It costs  
24 approximately \$300/hour for a court hearing versus approximately \$50/hour for a  
25 mediation session. The utilization of the mediation program at Pima County  
26 Juvenile court has continued to increase over the past five years: In 2010, 3 full-  
27 time mediators; 1,281 sessions were calendared; In 2011, 3 full-time mediators;  
28 1,425 sessions were calendared; In 2012, a fourth full-time mediator position was

1 added in the second half of the year; 1,696 sessions were calendared; In 2013, 4  
2 full-time mediators; 1,983 sessions were calendared; In 2014 we were down one  
3 full-time mediator <sup>3</sup>/<sub>4</sub> of 2014 and trained 2 new mediators; however, 1,841  
4 sessions were calendared.

5 Court-based ADR services provide access to justice, a framework to  
6 negotiate self-determined resolution, and compliance with state and federal laws.  
7 There has been a 35% increase in dependency petitions filed since 2011, and  
8 March 2015 was the second highest month for the filing of dependency petitions  
9 in the history of the Pima County Juvenile Court. Without the ability to provide  
10 ADR services at the current level, judicial caseloads and calendar congestion will  
11 increase. For example, Facilitated Settlement Conferences meet the requirement  
12 of A.R.S. §8-844 that the court hold a pretrial conference or settlement  
13 conference, or order a mediation allowing the truly contested cases to have  
14 hearings and trials in a timely manner. In 2014 there were 1,206 Facilitated  
15 Settlement Conferences scheduled. In addition to judicial efficiency, ADR  
16 services provide opportunities for better outcomes for children and families.  
17 Goals of the ADR services include increased parental compliance with case plans,  
18 perceived fairness in the judicial system through participation, and improved  
19 relationships and collaboration among parents, children, family members,  
20 placements and case managers.

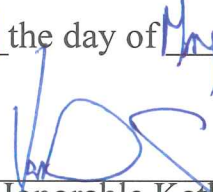
22 The proposed amendments to Rule 31, as written, include potentially  
23 conflicting and undefined terms. In one part, a mediator is required to be an  
24 “active member” of the State Bar in order to draft documents, and in another  
25 section it permits a mediator to be supervised by a “licensed attorney.” Is a  
26 licensed attorney different than an active member? What is the necessity for the  
27 mediator to be an active member as opposed to an inactive or retired member of  
28 the State Bar when all of those categories require admission to the State Bar and a

1 Juris Doctorate? Yet, to become a certified document preparer a person only needs  
2 an education level of a high school diploma or GED.

3 If the current proposal is passed, the court does not have the funds to pay  
4 for all of the costs for mediators to become either active members of the State Bar  
5 or certified legal document preparers. Nor does the court have the budget to pay  
6 for the yearly ongoing costs for those memberships and certifications. Without  
7 the necessary funds, the court may have to make difficult decisions to include  
8 cutting positions or terminating employees who do not meet the certification  
9 requirements. The court has invested valuable time and resources in the  
10 recruitment, training and oversight of each of the dedicated and hard-working  
11 mediators currently employed, which will be lost if employees are forced to be  
12 terminated due to the inability to comply with the mandate. Even if the court had  
13 the budget to comply with the mandate, there is no evidence to demonstrate that  
14 court-employed mediators should not continue to be exempt.

15 The Pima County Juvenile Court respectfully requests that the Arizona  
16 Supreme Court continue the current exemption, or include a specific exemption in  
17 the new rule for mediators employed by the court.  
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20 Respectfully submitted this 19<sup>th</sup> the day of May, 2015.

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23 Honorable Kathleen Quigley  
24 Juvenile Court Presiding Judge  
25 Arizona Superior Court in Pima County  
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28 Distribution list only on page seven.

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Original and ~~six (6) copies~~ delivered this  
20<sup>th</sup> day of *May*, 2015 to:

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