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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, Nanette M. Warner, is a retired Superior Court Judge and is currently a family law mediator and parenting coordinator in Pima 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 by the Honorable Janet Barton on May 20, 2015.

BACKGROUND

I served as a Superior Court Judge in Pima County for 24 years (from March 1986 to June 2010). I started my judicial career on the family law bench (then the domestic relations bench) and concluded my judicial career on the family law bench and served three rotation on the Family Law bench and twice served as the Presiding Family Law judge in Pima County . Commencing in 2003, I was a member of the Supreme Court's Committee

on Rules of Procedure in Domestic Relations Cases, chaired by Hon. Mark Armstrong (Ret.), which created the existing Arizona Rules of Family Law Procedure. I served on the subcommittee that drafted Rule 74. While Presiding Family Law Judge in Pima County, I led the development of the "special master" program in Pima County, including the training of the Special Masters. Special Masters were authorized by a local rule and were replaced by Parenting Coordinators with the adoption of the Arizona Rules of Family Law Procedure, Rule 74. I acted as the primary author of the initial form used in Pima County for the appointment of Parenting Coordinators in Pima County. While on serving on the family law bench, I appointed Special Masters and Parenting Coordinators in appropriate cases.

Since transitioning from the bench, I serve as a mediator in family law cases and as a parenting coordinator. I also serve as a volunteer settlement judge in Pima County. Additionally, I teach Advanced Family Law Practice at the University of Arizona, James E. Rogers College of Law. I have also spoken on the use of parenting coordinators at legal education programs. I am a member of AFCC and versed on the AFCC Guidelines for Parenting Coordination, developed in 2005, as part of its Parenting Coordination Task Force.

COMMENTS ABOUT THE PROPOSED CHANGES.

I will not comment on all the proposed changes, rather on the provisions that I believe are unnecessary at best or ill-conceived and harmful at worse.

As a global comment, it appears to me that the concerns about the use of Parenting

Coordinators (PCs hereafter) stems from a "culture" developed in the Superior Court in Maricopa County and not a statewide. In other words, the problem is not with the rule but with the manner in which some judges on the Maricopa County Family bench have executed the rule. I wholeheartedly agree that the appointment of a PC should not be used as an economic bar to keep litigants from access the court. In Pima County, a PC is usually not appointed unless:

1. The parties agree to the appointment at the time a Parenting Plan is submitted to the Court on an initial or subsequent petition and then only in cases where a high degree of conflict has existed, or
2. The Court, at the time of entering initial orders or in post-decree matters, notes that the parents have a high degree of conflict which has resulted in the parents repeatedly returning to the court for conflicts of all types, such as where to exchange the child, who can be present during parenting time, parenting time for special events (e.g. weddings and family reunions), refusal to let a child travel, in which extra-curricular activities should the child participate, etc. These conflicts reoccur despite the existence of a detailed parenting plan or orders. The Court then assesses the parties' ability to pay for a PC and seeks the parents input as to the name of the PC to be appointed. Not surprising, at times, the parents may not agree if a PC is needed or the identity of the PC.

I understand that in many cases in Maricopa County, the PCs are appointed at the time of entering initial orders or decree without any regard to need for a PC or assessment of

the financial situation of the parties. In Pima County, if a PC is required or agreed upon and the parents cannot afford a private PC, the Conciliation Court will serve as the PC.

I am attaching the form of PC appointment order which is the basis for most appointments in Pima County. The language on the preclusion of hearings is not as extensive as the language in the Maricopa PC appointment order. Further, in most cases in Pima County, the parents do not request a hearing on the PC recommendations. In fact, in many, if not most, cases, the PC is able to resolve the matter with the parents without having to file a formal recommendation.

AMENDMENT TO SECTION B. APPOINTMENT OF A PRENTING COORDINATOR

I strongly object to the requirement that the parents agree to the appointment of a PC. While an agreement would be ideal, these cases involved extremely high conflict parents. I have been involved in cases where the parents cannot agree as to what name the child should be called. One parent may object to the appointment because: 1. the other parent agrees to the appointment or 2. One or both of the parents love the conflict and stage provided by the court and get satisfaction from repeatedly "dragging the other parent back to court." This has been seen in cases where one parent has more economic resources than the other. Every time a proceeding is filed in Superior Court, a filing fee must be paid. The ability to get a timely hearing may be limited, if not, non-existent. As a result, the child suffers by being caught in the web of parental conflict. Additionally, one parent may be disadvantaged by not having representation.

Therefore, I urge the Supreme Court to reject section B and allow the trial court to appoint a PC over the objection of one or both the parents, upon making a finding that the parents have an ongoing conflictual parenting relationship, which has or has the potential to adversely affect the child and therefore, is in the child's best interest. Additionally, the court must be required to review current financial information of the parents to determine the ability of one or both of the parents to pay for the services of the PC and to initially allocate the payment of PC services based on the financial situation of the parents.

Secondly, I urge the Supreme Court to reject the portion of Section B that requires the parents to be bound by the decision of the PC. The right due process (including the review of a "judicial- like" decision) is the foundation of our system of justice. As a trial judge, I was mindful that my decisions could be review by a higher court and I made the required findings and established a record. The proposed "no review" of PC decisions is counter to our basic justice system. PCs may not be attorneys and therefore not completely understand what decisions fall within the scope of the PC's authority. Having a right to object to a PC's recommendation provides integrity to the system. In making recommendations, PC must be required to state the facts and information she considered in making her recommendations. Without this right of review, I suggest that a PC should conduct proceedings "on the record." Like many PCs, for economic reasons, I do the majority of my communication with parents by email. Most parents prefer this approach. It saves them time and money and facilitates a quick decision (recommendation) when needed, often within one day.

AMENDMENT TO RULE E(1) INITIAL TERM: This proposed rule would not allow the court to appoint a PC for more than one year absent an agreement. The AFCC Guidelines for Parenting Coordination, states in the footnote to Guideline VII (C), "Many experienced PC's have found a period of 18 months to 2 years to be optimal in terms of becoming familiar with the family and developing a working relationship with the parents." This comment reflects my experience as a judge and a PC. One year is often times not enough time for the PC to interact with the parents. As a PC, at the onset of my appointment, I tell the parents that one of my goals for them is for them not to need my services. I do this by working with them in ways that helps foster positive co-parenting. One year may not be enough time. Therefore, I suggest that the rule be amended to read that the initial term be no longer that "two years."

AMENDMENT TO RULE E(2) REAPPOINTMENT: The Supreme Court should reject the language that prohibits the PC from requesting reappointment absent the agreement of both parents. The PC should be allowed to request reappointment unless both parents object to the PC's reappointment. Before applying for reappointment, the PC must be required to with the parents regarding the reappointment. The request for reappointment must be copied to the parents and note if either parent objects. A parent who objects to reappointment should have 10 days to file an objection to the reappointment after the PC has applied for reappointment. Most times the parents do not calendar the end of the appointment. Therefore, they are not aware that the PC's appointment has terminated until they bring a matter to the PC for decision. Often, there is insufficient time to get a

reappointment to timely address a time emergent matter.

RULE I. EMERGENCY AUTHORITY AND PROCEDURE.

I object to the PC having emergency authority to make an emergency change legal decision-making or parenting time orders. Rule 47 and 48 provides a procedure for a parent to seek emergency court orders, even without notice. The PC should have the authority to recommend to the Court a change in legal decision making or parenting time, but not to make the decision. In some cases that decision would be irreversible. For example, one parent is Christian Scientist and one is not. The non-Christian Scientist wants a medical procedure which is time urgent and the other objects. If the PC decides that the non-Christian Scientist parent makes the decision, there is no recourse from the court for the other parent. This is putting the PC in the ultimate "super parent" role, which should not be sanctioned.

CONCLUSION

Many of the proposed changes to Rule 74, gut the underlying basis for PCs, their effectiveness in dealing with high conflict parents and are an ill-sought attempt to correct a judicial cultural problem. The misuse of PCs by the family law bench is best addressed through training and not this rule change.

RESPECTFULLY SUBMITTED June 15, 2015.

_Nanette M. Warner_____

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