

1 Honorable Suzanne Cohen  
2 Family Department Presiding Judge  
3 Superior Court of Arizona in Maricopa County  
4 201 W. Jefferson St.  
5 Phoenix, AZ 85003  
6 (602) 372-1916

7  
8 IN THE SUPREME COURT OF THE STATE OF ARIZONA

9 In the Matter of: ) Supreme Court No. R-17\_\_\_\_\_  
10 )  
11 PETITION TO ADD RULE 23.1 TO )  
12 THE RULES OF FAMILY LAW )  
13 PROCEDURE )

14 Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Presiding  
15 Judge of the Superior Court of Arizona in Maricopa County petitions this Court  
16 to create Rule 23.1, Arizona Rules of Family Law Procedure, regarding Change  
17 of Venue in Family Law Cases, as proposed below in Attachment A.

18 The proper venue for commencement of a family law action is set forth in  
19 A.R.S. §12-401 (for dissolution of marriage and legal separation), A.R.S. §25-  
20 502 (for actions to establish, enforce or modify duties of support), and A.R.S.  
21 §25-802 (for actions to establish maternity or paternity). However, when venue  
22 is improper and an action is brought in the wrong county, the court retains  
23 jurisdiction over the action unless the defendant or respondent to the action  
24 timely objects to the improper venue (pursuant to A.R.S. §12-404), or a party  
25 applies for change of venue for cause (pursuant to A.R.S. §12-406). When venue  
26 is improper, the venue statutes do not provide the court with any clear authority  
27 to act *sua sponte* to transfer a case to a county of proper venue.  
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1 The result is that Maricopa County is presently handling hundreds of  
2 family cases for residents of Pinal County. For example, A.R.S. §12-401(13)  
3 requires that actions for dissolution of marriage or legal separation be brought in  
4 the county in which the petitioner is residing at the time the action is filed. A  
5 recent review of new dissolution actions filed in the Superior Court in Maricopa  
6 County in a one year period from July 1, 2015 to June 30, 2016 found 197  
7 dissolution cases with children where the petitioner did not reside in Maricopa  
8 County and respondent did not object; in 123 of those cases the children resided  
9 with the petitioner outside of Maricopa County. In 16 of those 197 cases, the  
10 children resided with respondent, but neither petitioner nor respondent (nor the  
11 children) resided in Maricopa County. During the same time period, there were  
12 114 dissolution actions with no children that were filed in Maricopa County  
13 where the petitioner resided outside of Maricopa County and respondent did not  
14 object. In 56 of those 114 cases, neither the petitioner nor the respondent resided  
15 in Maricopa County.

16 This amounts to over 300 dissolution cases in one year, or basically the  
17 pre-decree case load of one judge, that were filed in the Superior Court in  
18 Maricopa County where petitioners resided outside of Maricopa County. There  
19 may be reasons in some of these cases why venue would remain with the  
20 Superior Court in Maricopa County—such as when the petitioner resides outside  
21 of Arizona and respondent resides in Maricopa County—but the significant  
22 number of dissolution cases filed where neither party reside in the County  
23 suggests that the statutorily mandated venue requirements are regularly being  
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1 disregarded; and this is just pre-decree. The proposed Rule 23.1 would give  
2 Superior Courts more control over ensuring that the clear legislative intent  
3 contained in the venue statutes in A.R.S. §12-401(13), A.R.S. § 25-502 and  
4 A.R.S. §25-802 are adhered to by the parties in family law actions.

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6 Respectfully submitted this 9th day of January, 2017.

7  
8 /s/ Suzanne Cohen  
9 Hon. Suzanne Cohen  
10 Family Department Presiding Judge  
11 Superior Court of Arizona, Maricopa County

12 Electronic copy filed the  
13 Clerk of the Supreme Court  
14 of Arizona this 9th day of  
15 January, 2017.  
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1 **Exhibit A**

2 **Rules of Family Law Procedure**

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4 **Rule 23.1. Improper Venue.**

5 **A. Transfer Upon Court’s Motion.** When a family law action has been  
6 commenced in an improper county in violation of A.R.S. § 12-401, A.R.S. §  
7 25-502, or A.R.S. § 25-802, the court, upon a finding that venue is improper,  
8 may on its own motion transfer the case to a county where venue is proper, so  
9 long as such transfer occurs no later than thirty (30) days after a Resolution  
10 Management Conference has been scheduled pursuant to Rule 76.

11 **B. Fees.** If a change of venue is ordered under this Rule, the plaintiff must pay the  
12 transmittal fee under A.R.S. § 12-284 to the clerk of the court transferring the  
13 case no later than 20 days after the order directing the change. No later than 30  
14 days after the clerk of the receiving court receives the file, the plaintiff must  
15 pay that clerk the initial case filing fee. If the plaintiff fails to timely pay either  
16 the transferring court’s transmittal fee or the receiving court’s filing fee, the  
17 court that ordered the change must dismiss the case without prejudice. The  
18 court ordering the transfer of venue may order the clerk of that court to refund  
19 the plaintiff’s original filing fee.  
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