

Hon. David L. Mackey  
Presiding Judge  
Superior Court in Yavapai County  
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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of:	)	Supreme Court No. R-17-0019
	)	
Petition to Add Rule 23.1 To	)	Comment to Petition to Add Rule 23.1
The Rules of Family Law	)	To The Rules of Family Law Procedure
Procedure	)	
_____	)	

I would like to advise the Court of a concern with proposed Rule 23.1, Rules of Family Law Procedure in its present form. Prior to submission of this comment, I have spoken with Presiding Judge Janet Barton, and she has stated her willingness to offer a modification to the proposed rule which will resolve the concern.

The proposed rule provides for the mandatory change of venue in family law cases upon the courts own motion and without any input from the parties. While I recognize that an unchecked current practice has placed an additional burden upon the Maricopa County Superior Court, such a change would alter longstanding practice throughout the State and does not provide for input from the parties who may have appropriate justification for filing in a different venue.

It has long been the practice in Arizona for high profile individuals and judicial staff including judges to file their domestic relations case in a different county to avoid publicity as well as to avoid potential conflicts with judges within their county. Public figures often file in different counties to avoid a media frenzy and public scrutiny of their very personal domestic relations information. The practice of filing in a different county also has avoided the effort it

takes for the Presiding Judge to arrange for a visiting judge, pay travel costs for that judge and arrange for often limited courtroom space. Since the matter is already filed in a venue in which there may not be a conflict, it can be heard by an out of county judge as part of their normal assignment.

The proposed rule provides for mandatory removal of a case in which a judge determines to have been filed in the wrong venue. It does not provide for any input from the parties prior to such a decision. Since the Superior Court in Arizona is a statewide court, venue has always been viewed as a choice rather than a mandate. I am aware of no other rule of court that mandates a change of venue without input from the parties. Furthermore, Arizona Courts have previously opposed legislation that would mandate a change of venue in guardianship and conservatorship cases.

Rule 1.2(D), Local Rules Practice of the Superior Court, Yavapai County provides for input from the parties before a case is transferred between judicial districts. The rule provides:

*“6. Other Methods of Transfer.* In addition to the transfer provisions in Rule 1.2(C), cases may be transferred to the Verde Valley Judicial District provided they qualify under Rule 1.2(B) or be removed from the Verde Valley Judicial District by any of the following methods:

(a) By Court Approval and Stipulation of All Parties. The stipulation shall set forth the grounds for such transfer and be approved by the judge to whom the case is assigned.

(b) By the Court. The Presiding Judge may transfer any pending case or hearing to or remove any pending case or hearing from the Verde Valley Judicial District subject to the right of any party to object to such order pursuant to Rule 1.2(C) within 10 days after notice of transfer.”

As a practical matter, as Presiding Judge of Yavapai County, I will provide the parties with a proposal to transfer the case to another judicial district and give the parties an opportunity for input prior to the actual transfer.

While I do not oppose a rule that would give judges the authority on their own motion to transfer domestic relations cases to another venue, I believe the rule needs to provide for input from the parties and the exercise of appropriate judicial discretion when reasonable grounds are given for keeping venue within the county in which the case was filed.

After speaking with Presiding Judge Barton about this concern, she has stated that upon filing of this comment she will offer the following additional language to subsection A of proposed Rule 23.1:

“Prior to ordering a transfer of the case under this rule, the court must provide the parties notice of its intent to transfer the case and allow the parties ten (10) days to file objections to the proposed transfer.”

Such an amendment would resolve my concerns.

Respectfully submitted this 3<sup>rd</sup> day of May, 2017.



Hon. David L. Mackey  
Judge of the Superior Court  
Superior Court in Yavapai County

Cc: Hon. Janet Barton  
Presiding Judge  
Maricopa County Superior Court

Hon. Suzanne Cohen  
Family Department Presiding Judge  
Maricopa County Superior Court

Hon. Charles Gurtler  
Presiding Judge  
Mohave County Superior Court