

1 Honorable Suzanne E. 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-17-0019
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29 Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Presiding
30 Judge of the Family Law Department of the Superior Court of Arizona in
31 Maricopa County hereby replies to the Presiding Judge of the Superior Court in
32 Yavapai County David Mackey’s comment on this Court’s petition to create
33 Rule 23.1, Arizona Rules of Family Law Procedure, regarding Change of Venue
34 in Family Law Cases.

35 The proposed rule addresses the problem of the court being powerless to
36 act when family law actions are filed in the wrong county and venue is improper.
37 Currently, only the parties to the action are allowed to raise the issue of improper
38 venue. As indicated in the original petition, the new rule would give the court
39 authority to transfer venue on its own motion upon a finding that the action has
40 been commenced in an improper county. As mentioned in the petition, as many
41 as 300 family cases are improperly filed each year in the Superior Court in
42 Maricopa County. The proposed Rule 23.1 would give Superior Courts more
43 control over ensuring that the clear legislative intent contained in the venue

1 statutes in A.R.S. §12-401(13), A.R.S. § 25-502 and A.R.S. §25-802 are adhered
2 to by the parties in family law actions.

3 In his comment on the petition, Presiding Judge Mackey has expressed a
4 concern that in certain cases, parties may have appropriate justification for filing
5 in a different venue than that set forth in statute. The Rule 23.1 as currently
6 proposed would not provide the parties with an opportunity to provide
7 information to the court prior to the court transferring venue to the proper
8 county. Presiding Judge Mackey suggests modifying the proposed Rule 23.1 to
9 provide notice to the parties of the court's intent to transfer venue and an
10 opportunity for the parties to file objections to the proposed transfer. Presiding
11 Judge Mackey has discussed this with the Presiding Judge of the Superior Court
12 in Maricopa County Janet Barton, and language modifying the proposed Rule to
13 allow for notice and a ten (10) day period for parties to object has been agreed
14 upon by Presiding Judge Mackey and Presiding Judge Barton. The proposed
15 amended new Rule 23.1 is attached to this Response.

16 Respectfully submitted this 19th day of June, 2017.

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18 /s/ Suzanne E. Cohen

19 Hon. Suzanne E. Cohen
20 Family Department Presiding Judge
21 Superior Court of Arizona, Maricopa County

22 Electronic copy filed with the
23 Clerk of the Supreme Court this
24 19th day of June, 2017.
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Attachment
(Amended language is underlined)

Rules of Family Law Procedure

Rule 23.1. Improper Venue.

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

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