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7 On behalf of other interested parties as listed herein

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**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO AMEND RULE 72,
ARIZONA RULES OF FAMILY
LAW PROCEDURE

Supreme Court No. R-16-0037

**COMMENT TO ORDER
REGARDING RULE 72,
ARIZONA RULES OF FAMILY
LAW PROCEDURE**

Pursuant to this Court’s Order of September 2, 2016, the below signed Arizona State Bar Certified Family Law Specialists, the Arizona Chapter of The American Academy of Matrimonial Lawyers, with the members listed individually herein, and as a Chapter, and numerous family law attorneys (hereinafter the “Group”) provide the following comments to the Court’s proposed changes to Rule 72 of the Arizona Rules of Family Law Procedure (hereafter “Rule”).

1 **I. Introduction**

2 A Petition to Amend Rule 72, Arizona Rules of Family Law Procedure, was
3 filed by Judges Peter Swann and Paul McMurdie on May 18, 2016. The Group
4 submitted its Comment thereafter.
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6 On September 2, 2016, this Court issued its Order continuing discussion on
7 the Swann/McMurdie Petition to the December 2016 Rules Agenda. This Court
8 further continued the deadline for Comments to October 28, 2016, and submitted a
9 proposed rule for comment. The following is the Group’s comment:¹
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11 **II. Appointment Findings**

12 The Group agrees with this Court’s position that the trial court may appoint
13 a Family Law Master (“Master”) over objection of a party only if the trial court
14 determines and makes findings that the parties can afford to pay the compensation
15 fixed by the trial court. This position continues to give the trial court discretion
16 when dealing with objections, and provides valid protection against financial
17 abuses of the process.
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25 ¹ The Group reasserts its Comment previously filed to the Swann/McMurdie Petition, however, limits their comments herein to the proposed changes made by this Court on September 2, 2016

1 **III. Appointment of Masters on Child-Related Issues**

2 The Group agrees with the general concept that Rule 72 should not be an
3 end run around the current Rule 74 (to accomplish what the prior Rule 74
4 allowed). At the same time, however, the Group believes that should the parties
5 agree, there is no reason that the parties should not be able to appoint a Master
6 on child related issues, such as parenting time or legal decision-making.

7 As recently amended, Rule 74 now allows both parties to stipulate to the
8 appointment of a Parenting Coordinator. The Parenting Coordinator is then
9 empowered to enforce, interpret, and in some cases, modify, existing orders.
10 Under the amended Rule 74, the Parenting Coordinator’s recommendations will
11 not be reviewed by the trial court. Thusly, two parties are generally agreeing to
12 a process that concludes with the Parenting Coordinator, and there is no
13 meaningful right of review or appeal.

14 The Group agrees that Rule 72 should not be employed to have a Master
15 appointed to perform Parenting Coordinator tasks over the objection of one
16 party. Where the parties agree, however, a Master under Rule 72 should not
17 have any less power than a Parenting Coordinator under Rule 74.

18 Another important point justifying the Group’s position is that under Rule
19 72, the Master, if appointed by agreement of the parties, would only be making
20 recommendations toward the creation of an order. Those recommendations
21 would be reviewable by the trial court, and possibly, by an appellate court.
22 There are built in levels of review for that purpose, and any newly created order
23 would have built in due process.
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1 For all intents and purposes, the Group believes that there should be little
2 or no difference between Rules 72 and 74. Parties in agreement should be able
3 to create orders (subject to judicial review) under Rule 72, and if they so agree,
4 have a Parenting Coordinator interpret and enforce those orders under Rule 74.
5 The proposed change that this Court has now put forth creates a conflict in the
6 two rules that has no justification.

7 8 **IV. Court Actions**

9 This Court's proposed Rule strikes a sentence out of Rule 72.G. The Group
10 cannot ascertain any reason why this sentence should be stricken. Clearly, if the
11 Master's report resolves all of the issues in the case, and there is no objection by a
12 party or the trial court, the trial court should enter judgment. That is consistent
13 with the basis of that section, and the remainder of the rule.
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15 16 17 **V. Prospective Application**

18 This Court's proposed changes do not have an effective date. There are
19 obviously Master appointments presently existing, and ones that will exist on the
20 effective date that the rule comes into play. Does the new rule change existing
21 Master appointments?
22

23 Amended Rule 74.Q. specifies that its revisions are applicable to
24 appointments or reappointments of Parenting Coordinators on or after January 1,
25 2016. That language made the rule applicable to prospective Parenting

1 Coordinator appointments. Amended Rule 74.Q. continues to state that any
2 existing appointments as of January 1, 2016, are governed by the prior version of
3 Rule 74. The Group suggests that comparable language be incorporated into any
4 changes to Rule 72 so that existing Master appointments are not impacted as work
5 in progress would be very difficult to resolve. All changes to Rule 72 should be
6 applicable to appointments issued after the effective date of the amended rule.
7

8
9 **Conclusion**

10 The Group submits this Comment based upon the Group's knowledge,
11 experience and expertise in representing parties appearing before the Courts of this
12 State in family law matters. The members of the Group represent practitioners
13 who are experts in this field, and organizations, such as the Arizona Chapter of the
14 American Academy of Matrimonial Lawyers, that practice at the highest level of
15 competence in family law. While the Group recognizes that not every case nor
16 every request necessitates the appointment of a family law master, this useful and
17 valuable resource should be left available to the parties and the Court. The Group
18 requests that its Comments herein, as well as those previously submitted, be
19 adopted by this Court.

20 RESPECTFULLY SUBMITTED this 27th day of October, 2016.
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The following join in, support and endorse the Comment to Order
Regarding Rule 72, Arizona Rules of Family Law Procedure:

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1 Electronic copy filed with the Clerk
2 of the Supreme Court of Arizona this
3 27th day of October, 2016.

4 By: /s/ BARRY L. BRODY

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7 *Signed with electronic authorization.
8 #Fellow of the American Academy of Matrimonial Lawyers.
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