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RE: the matter of R-17-00049 Sua Sponte Appointments and Conflicting Supreme Court Rule 95, and Arizona Rules of Family Law Procedure

Situation:

Supreme Court Rule 95 **Other Family Law Services and Resources** conflicts with Arizona Rules of Family Law Procedure ARFLP Rule 72 Special Master, and Rule 74 Parenting Coordinator.

Background:

1. Supreme Court Rule 95 **Other Family Law Services and Resources** states:

In addition to services prescribed elsewhere in these rules, the court may consider the services set forth in this rule, if available in a family law case.

A. Private Mental Health Services. In addition to conciliation services, the court may order parties to engage in private mental health services, including, but not limited to, counseling, custody legal decision-making or parenting time evaluations, Parenting Coordinator services, therapeutic supervision of parenting time, and other therapeutic interventions.

B. Substance Abuse Screening and Testing in Cases Where Custody Legal

Decision-Making or Parenting Time Are at Issue. Upon an allegation or

showing that a party has abused drugs or alcohol, including prescription

medication, the court may order substance abuse screening and random testing of

that party. The court shall designate the frequency of testing and apportion

responsibility for payment of screening and testing

2. No. **R-16-0037** RULE 72, ARIZONA RULES OF FAMILY LAW

PROCEDURE) was amended with the goal of the petition to eliminate the sua

sponte appointment of special masters when neither party is amenable to their

use.

Rule 72. Family Law Master.

A. Appointment and Compensation. Upon written stipulation by the parties ~~and~~

~~application by the parties, or on the court's own motion, or oral agreement on the~~

record in open court, the court may appoint a family law master who is an attorney

or other professional with education, experience, and special expertise regarding

the particular issues to be referred to the master.

The amendment to Rule 72(A) requires agreement by the parties—either through

written stipulation or oral agreement on the record in open court—before the

appointment of a family law master. This amendment is consistent with recent

modifications to Rule 74 that likewise prohibited a court from imposing parenting coordinator fees on a party without their consent.

3. R-15-0006

And Rule 74 Parenting Coordinator: B. Appointment of a Parenting Coordinator. The court may appoint a third party as a parenting coordinator in proceedings under Title 25, A.R.S., at any time after entry of a legal decision-making or parenting time order **only if each parent has agreed to the appointment either by written stipulation or orally on the record in open court.**

ASSESSMENT:

Supreme Court Rule 95 conflicts with ARFLP Rule 72 and Rule 74.

Supreme Court Rule 95 permits the court to Order "Other Family Services and Resources" whereas Arizona Rule of Family Law Procedure Rule 72 and Rule 74 DO NOT Allow the Court to Order Special Masters or Parenting Coordinators without having stipulation of the parties in writing or oral agreement on the record.

This is a huge problem and financial burden for litigants in Family Courts, as the Family Court Judges continue Ordering/appointing expensive third parties over objection of the parties; families are forced to spend more money, spend their

retirements, as ordered. There is no recourse, for some only bankruptcy at the hand of the courts and their processes. This is not in the best interest of our children.

See Judge Swann and Judge McMurdie's REPLY TO COMMENT TO PETITION TO AMEND RULE 72 OF THE RULES OF FAMILY LAW PROCEDURE, submitted August 4, 2016, which clearly indicates appointment of special masters over objection of any party is not appropriate, which was ORDERED and is to be effective at this time.

“The commenters support the goal of the petition to eliminate the sua sponte appointment of special masters when neither party is amenable to their use.”

They maintain such an appointment is inconsistent with the goal of the Arizona Courts to facilitate access to justice, and they further the court should lack the power to require parties to spend money on private service providers to the exclusion of their right to public justice. Rule 74 was amended implicitly recognizing referral of parenting time and legal decision making to a Parenting Coordinator was not authorized.

Family Court Judges continue with the appointment and use of expensive third party Special Masters, therapeutic interventionists /non judicial officers over

objections of the parties. This is an action of which cannot be referred even by stipulation according to Judge Swann of Division 1 Appeals. [see attached] It is clear that the use of a special master is used as a costly dry run for the main event before the trial, posing a financial burden onto the parties, and depleting the parties' funds of which could have been used for attorneys at trial, posing more aggravation and financial burden for the now "pro per" to learn ARFLP and Court Rules to try to represent themselves. The whole process is pointless, and in some cases takes 18 years to resolve this way if one party has the money to buy their justice and the other is shut out of justice.

The Trial court may not simply rely on affidavits of third parties in their rulings [but Family Court Judges do so regardless] and that referring to a special master expands the cost of litigation; and lengthens the time to resolution. The functions the expensive special masters perform [over objection] are closely analogous to those prohibited in Federal Courts. To impoverish families is not in the best interest of the child.

RECOMMENDATION:

Please abolish Supreme Court Rule 95 or amend Supreme Court Rule 95 to be in alignment with the newest updated changes of ARFLP Rule 72 and Rule 74 which have been heard on this forum and the Rules have been amended and ORDERED.

1. Delete Supreme Court Rule 95 A. (see below Attachment, strike through)
AND Add a financial burden “cap” of if the parties have reached \$10,000 in litigation fees for divorce and post decree, no third party assignments are to be imposed. For some of us we are well into the \$100,000’s due to worthless/futile appointment of third parties, which were costly, and carries a very high financial burden, their reports are misleading to the judges with events that never took place or use of the party’s retained attorneys only-leaving out the parties, with the end result having no resolve and possibly more of an inflamed situation than before appointment.

To re-adjudicate the issues in Rules 72 and 74 would be redundant and for the children and families the issue needs immediate correction.

ATTACHMENT

Rule 95. Other Family Law Services and Resources

In addition to services prescribed elsewhere in these rules, the court may ~~consider~~ recommend the services set forth in this rule, if available in a family law case.

~~A. Private Mental Health Services. In addition to conciliation services, the court may order parties to engage in private mental health services, including, but not limited to, counseling, custody legal decision-making or parenting time evaluations, Parenting Coordinator services, therapeutic supervision of parenting time, and other therapeutic interventions.~~

~~B A. Substance Abuse Screening and Testing in Cases Where Custody Legal Decision-Making or Parenting Time Are at Issue. Upon an allegation or showing that a party has abused drugs or alcohol, including prescription medication, the court may order substance abuse screening and random testing of that party. The court shall designate the frequency of testing and apportion responsibility for payment of screening and testing~~

