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**THE SUPREME COURT OF ARIZONA**  
January 26, 2018

**In the Matter of:  
PETITION TO AMEND RULE 95 OF THE  
RULES OF FAMILY LAW PROCEDURE  
WHICH CONFLICTS WITH ARIZONA RULES  
OF FAMILY LAW PROCEDURE RULE 72  
AND RULE 74**

**Supreme Court:**

**PETITION TO AMEND RULE 95  
OF THE RULES OF FAMILY  
LAW PROCEDURE**

**REQUEST FOR PERMISSION TO  
FILE THE PETITION OUTSIDE  
THE RULE 28 TIMELINES**

**PETITION FOR EXPEDITED  
ADMINISTRATIVE ORDER PER  
RULE 28 (G)**

Pursuant to Rule 28 (G) RULES OF THE ARIZONA SUPREME COURT Rule 28, Procedure for Adoption, Amendment or Repeal of Rules, Petitioner requests an expedited amendment TO Rule 95 ARIZONA RULES OF FAMILY LAW PROCEDURE as it presents conflict with other rules and procedure which has caused issuance of sua sponte appointments over objection of the parties, of which clearly is not the intent of the most recent Supreme Court Ordered Rule Amendments.

If the request for expedited attention to an amendment is not appropriate, Petitioner requests permission to file the petition outside the Rule 28 timelines to allow the Court to consider this proposal at the earliest upcoming Rules Agenda and allow comments to be submitted on or before May 21, 2018.

**Situation:**

ARIZONA RULES OF FAMILY LAW PROCEDURE Rule 95 **Other Family Law Services and Resources** (A) conflicts with ARIZONA RULES OF FAMILY LAW PROCEDURE “ARFLP” Rule 72 Special Master, and Rule 74 Parenting Coordinator.

**Background:**

1. ARIZONA RULES OF FAMILY LAW PROCEDURE **Rule 95 Other Family Law Services and Resources** R-16-0028 Ordered September 2, 2016 and effective January 1, 2017 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 Ordered December 14, 2016 and effective January 1, 2017,** 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, Ordered and effective January 1, 2016**

**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:**

ARIZONA RULES OF FAMILY LAW PROCEDURE Rule 95 (A) conflicts with ARIZONA RULES OF FAMILY LAW PROCEDURE Rule 72 and Rule 74.

ARFLP 95 (A) permits the court to Order "Other Family Services and Resources" inclusive of Parenting Coordinators and therapeutic interventionists/special masters 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.

The conflict has produced confusion and 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 against the Rules of Family Law Procedure afforded under A.R.S Title 25; 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 as amended, and is to be effective now.

“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.”

Such an appointment is inconsistent with the goal of the Arizona Courts to facilitate access to justice, and they further state 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 Court of Appeals. 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 an enormous financial burden onto the parties, and depleting the parties' funds of which could have been used for college funds, now are spent on attorneys at trial if there is any money left, 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 years and years to resolve. One party/litigant usually has the money to buy their justice by and through their attorney and expensive third party, whom the other party may never see or hear from, hence being shut out of opportunity for justice and conclusion of a case.

The Trial court must not simply rely on affidavits of third parties in their rulings [but Family Court Judges continue do so regardless] and that referring to a special master (TI) or Parenting Coordinator who is not regulated, 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:**

Petitioner requests this Court abrogate ARIZONA RULES OF FAMILY LAW PROCEDURE Rule 95 (A). to be in alignment with the ORDERED amended changes of ARFLP Rule 72 and Rule 74 thereby ceasing the end run around orders over objection of the parties and follow the ORDERS of the Supreme Court regarding ARFLP Rule 72 and Rule 74.

1. Abrogate ARIZONA RULES OF FAMILY LAW PROCEDURE 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 of whom carry a very high financial burden, their reports are misleading the judges with events that never took place or they use the party’s retained attorneys only-leaving out the parties, with the result having no resolve and likely more of an inflamed situation than before appointment. The cost financially and to the family is immense and harmful.

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

Respectfully submitted

/s/

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Patricia L. Cummins

## 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.~~

### Rule 95. Other Family Law Services and Resources

#### Arizona Revised Statutes Annotated Rules of Family Law Procedure

Arizona Revised Statutes Annotated  
Rules of Family Law Procedure (Refs & Annos)  
XIII. Other Family Law Services and Resources (Refs & Annos)

17B A.R.S. Rules Fam.Law Proc., Rule 95

#### 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.

**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

**C. B. Parent Education.** The court shall order the parties to engage in parent education as required by Arizona law. The court may also order supplemental or additional education in appropriate cases, such as parenting skills classes and parental conflict resolution classes.

**D. C. Supervised Exchange; Supervised Parenting Time; Therapeutic**

**Supervision.** The court shall take reasonable measures to protect the parties and their children from harm, including, but not limited to, supervised exchanges of parenting time, supervised parenting time, and therapeutic supervised parenting time.

**E. D. Family Violence Prevention Services; Domestic Violence Shelters; Advocacy**

**Services.** Goals of the court include prevention of domestic violence and protection of parties and children from domestic violence. In pursuit of these goals, the court may implement family violence prevention services, including, but not limited to, family violence prevention centers and victim advocacy services. If the court finds evidence of domestic violence in cases, the court may refer parties to services that the court deems appropriate for victims and batterers.

**F. E. Batterer Intervention and Prevention Programs.** If the court finds evidence that a party has committed domestic violence or may commit domestic violence in the future, the court may order the person to attend a Batterer Intervention and Prevention

Program approved by the Arizona Department of Health Services. A list of providers is available at the Arizona Department of Health Services website.

**G. F. Real Estate Special Commissioner.** The court may appoint a real estate special commissioner, in accordance with local rule or policy and procedure, to assist the parties in the division and disposition of community real property when the parties are otherwise unable to agree on such issues.

**H. G. Title IV-D Services.** Title IV-D Services may be provided in a Title IV-D case. A person may apply for Title IV-D Services at the Division of Child Support Services (DCSS) of the Department of Economic Security.

**I. H. Department of Child Safety.** The court may request or order the services of the Department of Child Safety if the court believes that a child may be the victim of child abuse or neglect as defined in A.R.S. § 8-201.