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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of)	Arizona Supreme Court No. R-
)	
ARIZONA RULES OF FAMILY)	
LAW PROCEDURE 81)	Petition to Add Rule 81
)	to Arizona Rules of Family Law
)	Procedure

Undersigned, on behalf of the Family Court Improvement Committee, petitions this Court to add Rule 81 to the Arizona Rules of Family Law Procedure as outlined in Appendix A. This petition addresses the need for Rule 81 as a vehicle to comply with A.R.S. § 25-410(B).

A.R.S. § 25-410(B)

The current version of A.R.S. § 25-410(B) reads:

B. If either parent requests the order, if all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health would be endangered or the child's emotional development would be significantly impaired, and if the court finds that the best interests of the child would be served, the court shall order a local social service agency to exercise continuing supervision over the case to assure that the custodial or parenting time terms of the decree are carried out. At the discretion of the court, reasonable fees for the supervision may be charged to one or both parents, provided that the fees have been approved by the supreme court.

The original version of the statute was adopted in 1987 and designated as A.R.S. § 25-338. While the legislature renumbered the law to its current location, it has not substantively changed its directive.

After the statute's adoption in 1987, this court, through its administrative office, referred the law to the "Task Force on Child Support and Visitation." *See* Appendix B at 1. The task force made recommendations to the "Council on Judicial Administration." *Id.* The council approved the task force's recommendations, and A.O.C. sent a letter to the county presiding judges giving guidance on implementing the statute.

[W]hen a court orders that a local services agency to exercise supervision over a case to assure that the custodial or visitation terms of the decree are carried out, the court, at its discretion, may order that reasonable fees for that supervision be charged provided that the fees have been approved by the Supreme Court.

The A.O.C. letter provided guidelines for developing and implementing post-judgment supervision plans and the imposition of approved fees.

The superior courts may have once used the letter's guidelines and fee authorization throughout the state, but over time the letter and contents became a historical relic gathering dust at A.O.C. But the need for post-judgment supervision in some cases remained.

The court of appeals, apparently not privy to the letter's guidelines or this court's attempt at implementing A.R.S. § 25-401(B), reversed judgments that may have been appropriate had the superior court followed the letter's guidelines and fee schedule. *See, e.g., Nold v. Nold*, 232 Ariz. 270, 274, ¶ 14 (App. 2013) (quoting *DePasquale v. Sup. Ct. (Thrasher)*, 181 Ariz. 333, 336 (App. 1995)); *see also* A.R.S. § 25-403(A). Recently, in *Gish*

v. Greyson, 253 Ariz. 437, 447-48, ¶ 50 (App. 2022), the court again struck a judgment because the court had failed to follow A.R.S. § 25-410(B). (“Neither the 2021 Parenting Order nor COBI order complied with the legislative directive that post-order supervision be conducted by a “local social service agency” with fees “approved by the supreme court.”). To square the need in some cases for post-judgment supervision with the statute’s directive, the Family Court Improvement Committee discovered the A.O.C. letter with its implementing guidelines.

This Court originally stated:

There is no statutory requirement that presiding judges submit a plan for custody/visitation supervision. However, each court needs to have one for its own operating procedures. Therefore, the attached guidelines for developing such a plan are provided.

Appendix B at 2; guidelines at p. 3-5. Proposed Rule 81 mirrors, in large part, the letter’s procedures. The Committee has modified those guidelines in the proposed rule to update terminology, reflect best practices, and track other Family Rules.

The Committee struggled with the fee provision. The original letter about fees set a statewide ceiling amount. “Court-ordered fees for supervision shall not exceed the lesser of the supervisor’s customary fee or \$60.00 an hour.” The letter then provides:

Since the Court has approved a maximum fee amount, if you as the presiding judge survey local social service agencies and determine that \$45.00 per hour (or any fee under \$60.00) is the highest fee charged locally, you can identify that lower amount as the ceiling for your particular county. However, if you want to identify a ceiling that is higher than \$60.00 per hour, such figure must be submitted to the Supreme Court for review.

Appendix B at 2.

The Committee represents a broad cross-section of Arizona with urban and non-urban counties represented. Fees charged for post-judgment supervision vary greatly based on the services provided within each county. Maricopa County fees for specialized services can run as high as lawyer fees. To peg a ceiling for fees covering such services in Maricopa County, may eliminate the cheaper fees currently being charged elsewhere. Likewise, setting a fee ceiling too low would eliminate providers within the more urban counties.

The Committee recommends a more generic fee schedule for each county. The Committee will work with this Court on any process it takes about fees. The Committee also questioned whether a fee schedule should be in the rule or by administrative order.

CONCLUSION

The Committee respectfully requests that the Court consider this petition and adopt the proposed new rule.

DATED this 14th day of November 2022.

Paul J. McMurdie
Chair, FCIC

APPENDIX A¹

Rule 81, Post-Judgment Parenting Time Supervision and Case Implementation Supervision.

a. Application. This rule applies after a judgment has been entered under Rule 78.

b. Definitions. These definitions apply:

(1) **Parenting Time Supervisor or Case Implementation Supervisor.** A “parenting time supervisor” or a “case implementation supervisor” is any person or local social service agency stipulated to by the parties and approved by the court, or any person or local social service agency appointed by the court to carry out the terms of A.R.S. § 25-410(B).

(2) **Local Social Service Agency.** A “local social service agency” is any group or individual recognized by the community as a provider of social services to members of the community, including conciliation courts, when ordered by the presiding judge of the county or presiding domestic relations judge.

(3) **Parenting Time Supervision.** Parenting time supervision encourages parenting time between the child and parents. The supervisor facilitates contact per court orders in a manner that may include but is not limited to physical supervision. Communication with and services provided by the parenting time supervisor are not confidential. Supervisors must observe and report their observations. The supervisor may terminate a court-ordered parenting time session should there be a concern arising from a participant’s behavior or safety issues for a participant, including the parenting time supervisor.

(4) **Case Implementation Supervision.** After a judgment is entered, implementation issues may remain other than the fitness of each parent to carry out the plan that the court ordered. Case implementation supervision assists the parties and court in implementing the judgment’s terms. Communication with and services provided by the supervisor is not confidential. Supervisors must observe and report their observations. Supervision may include a therapeutic component for all participants to address behaviors inconsistent with the parenting plan’s implementation.

c. The Parenting Time or Case Implementation Supervision Order.

(1) The court must order parenting time consistent with the child’s best interests. If the parties agree, or the court finds that without a continuation order the child’s physical

¹ Because this is a new rule proposal, the rule is shown in sentence case.

health would be endangered or the child's emotional development would be significantly impaired, the court may order parenting time or case implementation supervision consistent with the child's best interests.

(2) For the supervisor selection, the court may provide parties with a list of supervisors. The parties may stipulate to a supervisor from the list or any other person that the parties agree is appropriate to serve. The court must designate a supervisor based on the parties' stipulation or under a procedure adopted by the court.

(3) The appointment order must provide the following:

(A) The allocation of fee payment between the parties. After determining that the parties can afford to pay the fees, the order will state who will be responsible for paying the fees and how and when payments will be paid. If the parties cannot afford the fees and other funding is available, the order will provide how the costs will be covered.

(B) Scheduling appointment responsibility. The order must state the party or parties responsible for contacting the supervisor to arrange parenting time supervision or case implementation.

(C) Providing record availability to the supervisor. The order must specify what information is to be provided to the supervisor. The order must determine how, when, and by whom the information will be provided. If there are any special concerns or needs of the child, the supervisor should be informed.

(D) Establishing the frequency of reports from the supervisor. The order must specify the required reports, the report's content, and frequency. The order must require that the supervisor keep notes of each visit.

(E) For parenting time supervision, the order must specify the type required by the court. Such supervision may include but is not limited to, parenting time exchange supervision, parenting time supervision, and therapeutic parenting time supervision.

(F) Establishing the supervisor's authority to carry out the judgment.

(G) Setting out any procedure necessary for review hearings.

(H) Establishing the duration of parenting time or case implementation supervision. The supervision order expires at the court's discretion but must be stated in the order. If a party seeks to modify, extend, or vacate the parenting time or case implementation supervision, the requesting party must file the appropriate petition under Rule 91. A supervisor may submit a written request for an extension or modification. The court must allow the parties to be heard if a supervisor requests an extension or modification.

(J) Purpose of Parenting Time or Case Implementation Supervision. Identification of and protection from the potential risks to the child's physical or emotional health arising from parenting time.

(e) **Fees.** The imposition of reasonable fees is authorized for parenting time and case implementation supervision and may be charged to one or both parties under Rule 95(a). Reasonable fees are the usual and customary fees charged in the county, considering the availability of services, the nature of the issues presented, and the level of experience and training required of the supervisor.

APPENDIX B

Supreme Court

STATE OF ARIZONA

ADMINISTRATIVE OFFICE OF THE COURTS

Frank X. Gordon, Jr.
Chief Justice

William L. McDonald
Administrative Director
of the Courts

Allen E. Heiman
Division Director
Court Services

MEMORANDUM

TO: Presiding Judges of the Superior Court
FROM: Allen Hellman *ALH*
RE: Materials for "Supervision of Child Custody/Visitation"
DATE: February 8, 1988

As you are aware, Senate Bill 1031 (Chapter 211, Laws of 1987) made changes in three major areas: assignment orders for child support, expedited case processing for child support and visitation issues, and supervision of child custody/supervision.

I have previously sent you one packet of materials on assignment orders and another on plans for expedited case processing. This packet relates to the third issue and contains:

- Guidelines for Presiding Judges to Develop a Plan for Case Supervision,
- Sample of an Order for Supervision of Child Custody/Visitation, and
- Guidelines for Using the Court Order for Supervision.

These materials were developed by the Task Force on Child Support and Visitation and have been reviewed by the Council on Judicial Administration and its Advisory Committee on Child Support.

Pursuant to A.R.S. § 25-338, as amended by Chapter 211, when a court orders that a local social service agency exercise supervision over a case to assure that the custodial or visitation terms of the decree are carried out, the court, at its discretion, may order that reasonable fees for that supervision be charged provided that the fees have been approved by the Supreme Court.

February 8, 1988
page two

The fees that have been approved by the Supreme Court for case supervision are found on page 3 of the plan guidelines, Section IV(D). That section states:

Court-ordered fees for supervision shall not exceed the lesser of the supervisor's customary fee or \$60.00 an hour.

Since the Court has approved a maximum fee amount, if you as the presiding judge survey local social service agencies and determine that \$45.00 per hour (or any fee under \$60.00) is the highest fee charged locally, you can identify that lower amount as the ceiling for your particular county. However, if you want to identify a ceiling that is higher than \$60.00 per hour, such figure must be submitted to the Supreme Court for review.

Also note that the guidelines advise courts to prepare a list of local social service agencies that will provide case supervision services and their customary fees.

There is no statutory requirement that presiding judges submit a plan for custody/visitation supervision. However, each court needs to have one for its own operating procedures. Therefore, the attached guidelines for developing such a plan are provided.

Similarly, no forms were mandated by statute, but the enclosed Order for Supervision of Child Custody/Visitation is recommended. The accompanying guidelines for the court order provide instruction on how to use the form.

AH:MK:saw
enclosures

cc: Presiding Judges of Domestic Relations Divisions
Clerks of the Superior Court
Superior Court Administrators

WLKR03/24

**GUIDELINES FOR PRESIDING JUDGES TO DEVELOP
A PLAN FOR CASE SUPERVISION**

I. INTRODUCTION

These guidelines provide guidance to develop a plan to assure that the custodial or visitation terms of the decree are enforced. The standards set forth in these guidelines are intended to be the minimum requirements for compliance with the law. However, each presiding judge may determine, based on the particular needs and circumstances of the county, the specifics of the plan for implementation in that county. The Superior Court in a given county may desire to implement this plan by policy or local rule.

II. DEFINITIONS

- A. Supervisor - Any person or local social service agency stipulated to by the parties and approved by the court or, any person or local social service agency appointed by the court to carry out the terms of A.R.S. § 25-338(B).
- B. Local Social Service Agency - Any group or individual recognized by the community as a provider of social services to members of the community, including conciliation courts when so ordered by the conciliation court judge or presiding domestic relations judge.
- C. Supervision - A process which encourages physical access between child(ren) and parents. The supervisor shall facilitate the custody/visitation terms of the decree in such manner that may include but is not limited to physical supervision or case monitoring. Supervision may also include counseling and mediation. Communication with and services provided by the supervisor shall not be confidential.

III. PROCEDURES

- A. Request - If a request for supervision is made and if the court makes those findings required by A.R.S. § 25-338(B), the court shall order continuing supervision over the case.

B. Appointment of Supervisor

1. The court will provide parties with a list of supervisors [See Section IV(A) of this document]. The parties may select and stipulate to a supervisor from the list, stipulate to a supervisor not included on the list, or the court will designate a supervisor.
2. Upon the appointment of a supervisor, the order should take into consideration the following (see the attached Guidelines for the Court Order for Supervision):
 - a. Payment of fees
 - b. Scheduling of appointments
 - c. Availability of records to the supervisor
 - d. Reports from the supervisor
 - e. Type of supervision
 - f. Visitation
 - g. Supervisor's authority
 - h. Review hearing
 - i. Duration of supervision
 - j. Other concerns

IV. PROCESS

- A. Supervision List - The court will prepare a list of local social service agencies which will provide supervision services and their customary charges for such services. The court may appoint an individual in lieu of a local social service agency to carry out the terms of A.R.S. § 25-338(B).
- B. Communications to the Court - The supervisor shall make regular reports as determined by the court. Whenever a report is filed with the court, copies shall be provided to the attorneys and to the parties. Communications shall not be made to the judge unless all parties have the opportunity to be present.

- C. Non-Compliance - If the supervisor believes there is a lack of cooperation in carrying out the terms of the order, the supervisor shall file a report and request a hearing with the court. The hearing shall be set within seven (7) days.
- D. Fees - Court-ordered fees for supervision shall not exceed the lesser of the supervisor's customary fee or \$60.00 an hour. This service fee has been approved by the Supreme Court. Any court-ordered fee in excess of that amount must also be approved by the Supreme Court. This does not preclude the parties and the supervisor from agreeing to a lower fee or no fee.

(SAMPLE)

SUPERIOR COURT OF ARIZONA, COUNTY OF _____

_____)	Case No. _____
Petitioner,)	
)	ORDER FOR SUPERVISION
vs.)	OF CHILD CUSTODY/VISITATION
)	
_____)	Div. _____, Judge _____
Respondent.)	

The court finding good cause, IT IS ORDERED THAT _____
shall supervise this case to assure that the custody or visitation is carried out as outlined in the terms of the
decree (attached), or as follows:

☐ 1. Payment of Fees:

☐ 2. Scheduling of Appointments:

☐ 3. Records to the Supervisor:

☐ 4. Reports from the Supervisor:

☐ 5. Type of Supervision:

[] 6. Visitation:

a. Site -

b. Transportation -

c. Participation -

d. Schedule -

[] 7. Supervisor's Authority:

[] 8. Other Concerns:

IT IS FURTHER ORDERED that this matter shall be set for Review Hearing on _____, or at the request of the supervisor.

IT IS FURTHER ORDERED that this Order for Supervision shall expire on _____, or in 180 days from today unless either party or supervisor submits a written request for a continuance, in which event the court shall review or set a hearing on this matter. At the request of any interested party and no sooner than thirty (30) days from today, and for good cause showing, the court may vacate or modify the order.

IT IS FURTHER ORDERED that if the supervisor requests a hearing, the hearing shall be set within seven (7) days.

DONE IN OPEN COURT this date: _____

Judge

GUIDELINES FOR USING THE COURT ORDER FOR SUPERVISION

I. PURPOSE

To provide guidance for the court to assist the judge in framing an Order for Supervision by suggesting matters to be covered in the order.

II. GUIDELINES

The Order for Supervision will serve as a set of instructions for the parents and the supervisor and should therefore be written in clear and easy-to-follow language. The order should be specific, provide a structure for the visitation and outline the responsibilities of all parties involved. The following provisions and topics should be considered by the court when completing the Order for Supervision:

- A. Payment of Fees** - The order will state who will be responsible for payment of fees and how and when fees will be paid.
- B. Scheduling of Appointments** - The order will state the party or parties responsible for contacting the supervisor to make arrangements for supervision of the case.
- C. Availability of Records to the Supervisor** - The order should specify what information, if any, including psycho-social documents, will be provided to the supervisor. The order should also clarify how, when, and by whom the information will be provided to the supervisor. If there are any special concerns or any special needs of the child(ren), the supervisor should be informed.
- D. Reports from the Supervisor** - The order should specify what reports from the supervisor will be required by the court, the content of the reports and how often the reports will be required. The order should instruct the supervisor that any reports to the court, verbal or written, will also be made available to the parties and their attorneys.
- E. Types of Supervision** - Depending on the nature and circumstances of the case, the order should specify the type of supervision desired by the court. As examples, two (2) types of supervision are listed below.

1. **Physical Supervision:** This type of supervision should be used when a more intense contact is required between the supervisor and the family. Physical supervision can be:
 - a. When the supervisor does not let the child(ren) out of sight during the specified visitation times; or
 - b. When the supervisor is available at or near the visitation site but not necessarily observing the actual visitation.
2. **Non-Physical Supervision:** This type of supervision should be used when physical supervision is not required. Arrangements for and the monitoring of visitation can be made by telephone and/or by correspondence.

F. Visitation

1. **Visitation Site:** The order may specify where visitation will occur.
2. **Transportation:** The order may specify who will be responsible for transporting the child(ren) to the visitation site and who will be responsible for returning the child(ren) home.
3. **Participation at Visitation:** The order may specify who will and who will not be allowed to be present during the visitations.
4. **Visitation Schedule:** Although some flexibility regarding times and days of the week should be provided to facilitate locating an available supervisor, terms such as "reasonable visitation" should be avoided. A definition of the frequency and duration of the visitation should be stated.

G. Supervisor's Authority - The order should specify what authority will be given to the supervisor to help carry out the terms of the order. For example,

1. The authority to determine visitation sites, days and times of visitation should conflicts in schedules occur.
2. The authority to transport the child(ren) should the need arise.

3. The authority to terminate visits when it appears that continuing the visit would endanger the physical or mental health of the child.
 4. The authority to request a review hearing should either party not comply with the court order or cooperate with the supervisor.
- H. **Review Hearing** - The order shall make provisions for review hearing when deemed necessary by the court or at the request of the supervisor.
- I. **Duration of Supervision** - The order shall include a statement that defines the duration of the supervision. The Order for Supervision should expire in 180 days unless either party, or the supervisor, submits a written request for a continuation, in which event the court shall review or set a hearing on the matter. At the request of any interested party and no sooner than thirty (30) days from the original order, and for good cause, the court may vacate or modify the order. If the supervisor requests a hearing, it shall be set within seven (7) days.