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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of) Arizona Supreme Court No. R-22-0005
)
ARIZONA RULES OF FAMILY) REVISED PETITION TO AMEND
COURT PROCEDURE 78, 85 AND) ARIZONA RULES OF FAMILY
91) LAW PROCEDURE 78, 85
_____) AND 91

**REVISED PETITION TO AMEND ARIZONA RULES OF FAMILY
COURT PROCEDURE 78, 85 AND 91**

Under Rule 28, Rules of the Arizona Supreme Court, Petitioners, in their individual capacities, petition the Court to amend Arizona Rules of Family Law Procedure 78, 85 and 91, as reflected in the attachment hereto, effective January 1, 2023. **On January 6, 2022, Petitioners filed a petition to amend Family Rules 78 and 91. Upon further review of the interplay between case law, statutes and the proposed rule changes, we recommend additional related changes. In this revised petition, the text in bold below is changed or added and highlights the rationale for those additional changes, which are also reflected in the attachment to this revised petition.**

BACKGROUND AND BASIS FOR REQUESTED CHANGES

The recent opinion *Yee v. Yee*, 251 Ariz. 71 (App. 2021) clarified jurisdictional issues in post-judgment (typically post-decree) appeals in Family Court proceedings after this Court's 2019 substantial revisions to the Arizona Rules of Family Law Procedure.

Yee explained that a ruling on a post-judgment motion is appealable as a “special order made after final judgment” under Arizona Revised Statutes (A.R.S.) § 12-2101(A)(2) “without certification under Arizona Rule of Family Law Procedure (Rule) 78 *but only after* the court resolves all relief sought in the motion.” 251 Ariz. at 71, ¶ 1, 76, ¶¶ 13-14. *Yee*, therefore, held that (1) Family Rule 78 “final judgment” language was not required for post-judgment rulings to be appealable but (2) that post-judgment rulings are appealable only after the court resolves all relief requested in a post-judgment petition. *Id.* at 76, ¶ 14.

Yee also held that a Family Rule 83 (“Altering or Amending a Judgment”) motion may only seek to challenge a final judgment entered under Family Court Rule 78(b) or 78(c). *Id.* at 71, ¶ 1. Because Family Rule 78(b) and (c) no longer applies to post-judgment orders, *Yee* effectively concluded that a Family Rule 83 motion may not be directed to post-judgment orders. *Id.* at 77, ¶ 19 (“a Rule 83 motion challenging a post-decree order or any ruling other than a Rule 78(b) or (c) judgment is improper and can provide no basis for relief”). This is distinguishable

from a civil proceeding with a Civil Rule 59 (“New Trial; Altering or Amending a Judgment”) motion, directed to a post-judgment order. *Id.* at ¶ 20; *see also Desmond v. J.W. Hancock Enters., Inc.*, 123 Ariz. 474 (1979); *Tripati v. Forwith*, 223 Ariz. 81 (App. 2009). As explained in *Yee*, the text of Family Rule 83 requires such a motion to be filed “after the entry of judgment under Rule 78(b) or (c),” while Civil Rule 59 contains no such restriction. *Compare* Family Rule 83(c)(1) *with* Civil Rule 59(b)(1). *See Yee*, 251 Ariz. at 77, ¶ 19.

Applying *Yee*’s conclusion that a Family Rule 83 motion may not be directed to post-judgment orders, a motion for relief from judgment or order under Family Rule 85(b) likewise may not be directed to post-judgment orders. Civil Rule 60(b), upon which Family Rule 85(b) is based, has been interpreted to be limited to “judgments, orders or proceedings that are final.” *Southwest Barricades, L.L.C. v. Traffic Management, Inc.*, 240 Ariz. 139, 141, ¶ 11 (App. 2016). Because post-judgment orders are not final judgments, it appears a Family Rule 85(b) motion may not be directed to post-judgment orders.

In undertaking its analysis, *Yee* noted conflicting approaches taken in recent appellate decisions, both in addressing appellate jurisdiction over orders resolving post-decree requests as well as the applicability of Family Rule 78 to the resolution of post-decree requests. *Id.* at 74, ¶ 7 n.2 (citing cases). *Yee* also noted that the Family

Rules do not reflect the requirement that a post-judgment ruling resolve all relief requested in a post-judgment request before that ruling is appealable:

The current [Family] Rules do not reflect the requirement that the family court must have fully resolved all of the relief requested in a post-decree motion or petition before an appeal can be taken from such rulings. To avoid uncertainty and confusion, the court suggests the Arizona Supreme Court consider a rule change directing the family court to state when it has fully resolved a post-decree motion or petition, thereby putting the parties on notice that the time to take any appeal has begun. The resolution of this case, however, does not turn on the lack of such a rule.

Id. at 76, ¶ 14 n.5. This need for clarity in the Family Rules is particularly significant given the large number of self-represented parties in such proceedings and concerns about requiring all participants to be aware of, and then understand and account for, the *Yee* requirements.

Given these issues and concerns, Petitioners have considered various possible changes to the Family Rules to account for the issues addressed in and resulting from *Yee*. At first, Petitioners contemplated proposing separate rules in the Family Rules to account for *Yee*. Logically, such proposed rules would appear in Part XI of the Family Rules (“Post-Judgment Proceedings”), set forth in Family Rules 91-91.7. And given *Yee*, such separate rules would be textually similar to Rule 78(b) and (c), but for different jurisdictional reasons and based on different subparts of A.R.S. § 12-2101. Petitioners, therefore, concluded that proposing nearly identical, but not

actually identical, provisions in two portions of the Family Rules would not aid in clarity and would not assist the participants, including self-represented parties, in Family Court matters.

In the end, having considered various alternatives and noting that the proposals requested here differ somewhat from the *Yee* analysis, Petitioners propose amendments to Family Rules 78, 85 and 91 to clarify requirements for post-judgment rulings to be appealable. The proposed amendments in the attached appendices seek to implement *Yee* and add clarity by changing Family Rules 78, 85 and 91 in the following material ways.

First, the proposed amendments move the definition of “Judgment” from Family Rule 91(a)(1) to Family Rule 78(a)(1), leaving a cross-reference to Family Rule 78(a)(1) in Family Rule 91(a)(1). This proposed change resolves an inconsistency in the current Family Rules, where the single term “judgment” is defined in two ways in two locations.

Second, the proposed amendments revise the definition of “Judgment,” proposed to be in Family Rule 78(a)(1), by including in the definition that “**A decision resolving a post-judgment petition filed pursuant to Rule 91(b) is a judgment**” and clarifying that “A temporary order is not a judgment.” Although now defining a post-judgment decision as analyzed in *Yee* as a “judgment,” this proposed amendment avoids duplication of similar terms and concepts in different

portions of the Family Rules and the resulting confusion that using similar, but not identical, terms in different parts of the same rule set could cause.

***Third*, the proposed amendments remove the word “final” in Family Rules 78(b) and (c) and instead use the word “appealable.” The intent is to make plain that a court must make such a determination under Family Rule 78(b) or (c) for a decision resolving a post-judgment petition to be appealable. This will avoid confusion about the different statutory bases to appeal a family court ruling and unnecessary premature appeals while also guiding participants on when the time to file a notice of appeal begins.**

Fourth*, the proposed amendments revise Family Rule 85 by removing “final” and “order or proceeding” to clarify that such a motion must be directed to a judgment only, which includes a post-judgment decision. Such change is consistent with *Southwest Barricades, L.L.C.

The proposed amendments also contain two technical changes: (1) replacing the term “decree” in Family Rule 78(e)(1) with the broader term “judgment,” a change consistent with the definition of “judgment” in proposed changes to Family Rule 78(a)(1), and (2) removing, as shown in the attachment, the phrase “within 15 days after entry of the judgment” in Family Rule 78(e)(3) and using, instead, “timely,” to eliminate a potentially misleading ambiguity, given that Family Rule

83(c)(1) provides that a Rule 83 motion “must be filed not later than 25 days after the entry of judgment under Rule 78(b) or (c).”

CONCLUSION

Petitioners recognize that there may be several ways to implement *Yee* and that the proposals here represent one of those ways. These proposed amendments, however, are made after consideration of those alternatives and after consultation with members of the Family Court Bar. They are, Petitioners suggest, the most straightforward alternatives that have been identified in seeking to avoid concerns about uncertainty and confusion expressed in *Yee* and to provide clarity and certainty about when a ruling on a post-judgment petition is appealable.

Petitioners respectfully request that the Court consider this revised petition at its earliest convenience. Petitioners also request that the revised petition be circulated for public comment and that the Court adopt the proposed changes, either as requested or as modified in light of comments received from the public, with an effective date of January 1, 2023.

DATED this 25 day of March 2022.

Paul J. McMurdie

Samuel A. Thumma

ATTACHMENT¹

¹ Changes or additions in rule text are shown by capitalized text and deletions from text are shown by strikeouts.