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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-22-

10 **PETITION TO AMEND RULE 76.1**
11 **OF THE ARIZONA RULES OF**
12 **FAMILY LAW PROCEDURE**

PETITION

13 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar
14 of Arizona hereby petitions the Court to amend Rule 76.1, Arizona Rules of Family
15 Law Procedure. This proposed amendment will provide an explicit incremental
16 process for pretrial statements and ensure protection of due process rights.

17 Family Rule 76.1(b) sets forth the date a pretrial statement is due (currently,
18 twenty days before the trial date). However, family law practitioners have reported
19 that parties are often ordered to file these statements five days before trial.
20 Modifying this rule, as set forth in Appendix A attached hereto, will explicitly
21 provide more time for parties to settle the matter. This additional time may result in
22 more cost-effective litigation to the extent it furthers settlement opportunities. In
23 turn, it will allow more docket flexibility for the court to prioritize and hear other
24 cases that require judicial intervention.
25

1 The current version of Family Rule 76.1(c) contemplates joint or separate
2 pretrial statements. The rule, however, does not currently provide an explicit
3 procedure for the preparation and submission of a joint pretrial statement; the only
4 guidance is that the “initiating” party must take the lead. While an attorney with
5 experience will understand the party responsible for initiating this process, a pro per
6 may not. Anecdotally, family law practitioners report that only a minority of the
7 cases have attorney-representation—less in smaller counties. In order to provide a
8 level playing field for court proceedings, the rules should be as clear as possible,
9 provide as much direction as reasonable, and protect the due process rights of the
10 parties by addressing all issues to be contested at trial.

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13 This Petition proposes that a new subsection be added to Rule 76.1, titled
14 “Notice of Issues” under subsection (f). Rule 76.1(f), in the proposed amended rule,
15 would mandate that parties file a “Notice of Issues” at least twenty (20) calendar
16 days before the trial date. This new clause will resolve opacity in the current pretrial
17 process. This initial specificity, in conjunction with distinguishing “calendar” from
18 “business” days in several other edits, better clarifies the sequential steps for filing
19 the pretrial statement. Clear and specific guidance facilitates better compliance with
20 the rules and leads to overall efficiency in case adjudication. Likewise, the provision
21 for a judicial option to disqualify issues not listed in a timely-filed Notice of Issues
22 further protects due process rights. To better assist self-represented individuals, a
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1 (sample) Notice of Issues form, as set forth in Appendix B attached hereto, has been
2 developed and included with this Petition.

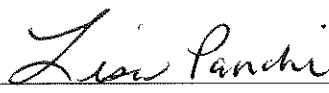
3 The remaining proposed changes are minor administrative edits to re-
4 designate certain subsections to ensure the rule sets forth procedural specifications
5 from the earliest deadlines to the latest deadlines to avoid confusion. A logical flow
6 of chronological deadlines should make the rule easier for self-represented parties to
7 understand and follow.
8

9
10 Greater clarity in the process, as proposed with this rule amendment, will help
11 unrepresented litigants better understand the process for submitting a pretrial
12 statement, including the nuances of date calculations. It will also provide judges with
13 a better understanding of the contested issues to streamline the court's planning for
14 trial.
15

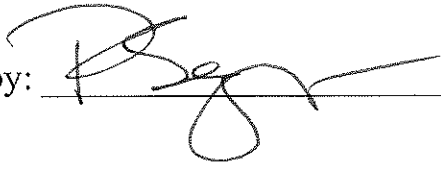
16 CONCLUSION

17 The State Bar of Arizona respectfully requests that the Court modify Family
18 Rule 76.1(b)(2) and (c) as set forth in the attached Appendix A.
19

20 RESPECTFULLY SUBMITTED this 10th day of January, 2022.

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22 
23 Lisa M. Panahi
24 General Counsel
25

1 Electronic copy filed with the
2 Clerk of the Supreme Court of Arizona
3 this 10th day of January, 2022.

4 by: 
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Appendix A

Appendix A

(Please note: deletions are reflected by ~~strikethrough~~ and additions are reflected by underline.)

Rule 76.1. Scheduling Conference; Scheduling Statement; Notice of Issues; Pretrial Statement.

(a) Scheduling Conference. The court may on its own, and on request of a party must, hold a scheduling conference to formulate a plan for trial, including procedures for facilitating the admission of evidence and the filing of a pretrial statements. At least one of the attorneys who will conduct the trial for each party, and any self-represented parties, must attend this conference.

(b) Timing. Unless the court orders otherwise, the parties must file:

(1) a scheduling statement 20 days before the date set for a scheduling conference, if one is set; ~~and~~

(2) a notice of issues 20 days before a trial; and

(2)(3) a pretrial statement 20 5 days before a trial.

(c) Joint and Separate Statements. Unless the court orders otherwise, the parties may file joint or separate statements. If preparing a joint statement, the party who initiated the action set for hearing must take the lead to prepare a draft joint statement and must communicate with every other party concerning the statement as outlined below:

(1) the party who initiated the action set for hearing must provide their outline for the pretrial statement to the opposing party 15 calendar days prior to the trial.

(2) then, 8 business days or more before the hearing, the parties shall exchange their portions so that the positions can be merged.

(3) the pretrial statement will be reviewed by both parties and filed no less than 5 business days prior to the hearing date.

Every statement must be signed by each party or counsel. However, if the parties are self-represented and there is a history of domestic violence, the parties must file separate statements.

(d) The parties may use the form of statement provided in Form 16, Rule 97. Each statement must include the information required in section (e) or ~~(f)~~(g), as applicable.

(e) Scheduling Statement. [no change in “scheduling statement” text]

(f) Notice of Issues. The Notice of Issues must be substantially similar to the form set forth in Form 18, Rule 97 (“Notice of Issues”). The Notice of Issues must contain a complete list of all remaining contested issues the filing party intends to present at the trial. Issues not raised previously cannot be raised for the first time in the Notice of Issues. Each party must file a separate Notice of Issues. Issues listed in the Notice of Issues are listed generally; specificity is reserved for the Pretrial Statement after the parties and/or their counsel (if represented) have met and conferred to narrow or resolve the contested issues prior to the generation and submission of the Pretrial Statement. Neither party is required to file a Notice of Issues prior to a temporary orders or other interim hearing.

~~(f)~~(g) Pretrial Statement. [no change in “pretrial statement” text]

~~(g)~~(h) Attachments to the Statement. [no change in “attachments to the statement” text]

~~(h)~~(i) Failure to List. A party may not present a witness or offer an exhibit during trial other than those listed and exchanged in a statement submitted before the scheduling conference or trial, unless the court orders otherwise for good cause. A party waives the right to raise an objection at the trial or hearing if the specific objection to a witness, exhibit, or claim is not raised in the statement submitted pursuant to section ~~(f)~~(g) of this rule. A party may not present an issue not listed in either party’s Notice of Issues at trial, unless the court orders otherwise for good cause.

Appendix B

APPENDIX B

Sample Form 18 – Notice of Issues

Name of Attorney or Party, if self-represented: _____
Mailing Address (unless protected): _____
City, State, Zip Code: _____
Telephone: _____
State Bar of Arizona No. _____
Representing: _____

ARIZONA SUPERIOR COURT, _____ COUNTY

Regarding the Matter of: **CASE NO.** _____

Petitioner

NOTICE OF ISSUES

and

Respondent

The ___ Petitioner ___ Respondent submits this Notice of Issues and states that the following issues are still contested, and the filing party intends to present these issues at the trial scheduled to take place on _____ (date) at _____ (time):

☐ The annulment of the parties' marriage.

☐ The dissolution of the parties' ☐ covenant ☐ non-covenant marriage.

☐ The legal separation of the parties' ☐ covenant ☐ non-covenant marriage.

☐ The establishment of the ☐ paternity ☐ maternity of the following ☐ minor ☐ adult children: _____

☐ The ☐ establishment ☐ modification ☐ enforcement of legal decision-making authority and related orders regarding the following minor children: _____

☐ The ☐ establishment ☐ modification ☐ enforcement of a parenting time schedule and related orders regarding the following minor children: _____

☐ The ☐ establishment ☐ modification ☐ enforcement of child support payments and related orders regarding the following ☐ minor ☐ adult children: _____

☐ The ☐ establishment ☐ modification ☐ enforcement of spousal maintenance payments made by the ☐ Petitioner ☐ Respondent to the ☐ Petitioner ☐ Respondent.

☐ The division of community property and/or debts ☐ and the assignment/confirmation of separate property and/or debts.

☐ The ☐ modification ☐ enforcement of an order ☐ dividing community property and/or debts ☐ and/or assigning/confirming separate property and debts.

☐ The allocation of attorney fees and costs.

☐ The ☐ establishment ☐ modification ☐ enforcement of third-party rights (including but not limited to "grandparents rights") regarding the following minor children: _____

☐ The registration of foreign orders regarding ☐ legal decision-making and/or parenting time ("custody") ☐ child support ☐ spousal maintenance ☐ other.

☐ Other relief authorized by statute (specify): _____

Dated: _____

Name: _____
☐ Counsel for ☐ Petitioner ☐ Respondent
☐ Self-Represented ☐ Petitioner ☐ Respondent

ORIGINAL of the foregoing filed with the Clerk of the Superior Court

COPIES of the foregoing ☐ mailed ☐ delivered this _____ day of _____, _____ to:
☐ The Honorable _____ (Assigned Judicial Officer)

☐ Counsel for ☐ the Petitioner ☐ the Respondent at the following address: _____

☐ Other (specify): _____ at the following address: _____
