

Judge Bruce R. Cohen
Family Department Presiding Judge
Maricopa County Superior Court
125 West Washington, Suite 101
Phoenix, Arizona 85003

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:) Supreme Court
) No. R-21-0050
PETITION TO AMEND RULES 34(c))
AND 76(b) OF ARIZONA RULES) PETITION TO AMEND ARFLP
OF FAMILY LAW PROCEDURE) RULES 34(c) AND 76(b)

SUPPLEMENT BASED UPON STAKEHOLDER INPUT

This December 23, 2021, petition sought amendments to Rules 34(c) and 76(b) of the *Arizona Rules of Family Law Procedure* (ARFLP) to conform with the consultation exception for self-represented litigants in Rule 9(c), ARFLP.

The following was the proposal as detailed in the Petition submitted on December 23, 2021:

Rule 34(c) Duty to Consult. Before filing a motion to continue a trial, hearing, or conference, the moving party must consult with other parties in the case and advise the court whether the other parties object to the motion. ~~This~~

~~requirement does not apply when there is a protective order in the case~~ If there is a current court order prohibiting contact between the parties or a history of domestic violence between ~~the~~ self-represented parties, the parties are not required to consult regarding whether there is an objection to the motion.

Rule 76(b) Meet-and-Confer and Other Party Duties.

(1) *Generally*. Not less than 5 days before the RMC, the parties must:

(A) confer to resolve as many issues as possible. ~~This requirement does not apply if~~ If there is a current a court order prohibits prohibiting contact between the parties, or ~~they have~~ a history of domestic violence between self-represented parties, the parties are not required to meet and confer. ~~However, in such situations counsel still must take all reasonable steps to resolve as many issues as possible;~~ and

The period in which comments have been sought has led to further discussion regarding the goals for this rule change. The focus is on maximizing consultation before certain submissions to the court are made.

And here, the rule should be expanded as much as possible to require such consultation without compromising the protection for those who allege to have been victimized by domestic violence. The principal variable under this amended version is whether the alleged victim of the domestic violence is self-represented. If so, whether the opposing party is represented or not, the duty to confer or consult shall not be imposed.

It is believed that the following language more fully meets the stated objectives than does the language proposed in the initial petition:

Rule 34(c) Duty to Consult. Before filing a motion to continue a trial, hearing, or conference, the moving party must consult with other parties in the case and advise the court whether the other parties object to the motion. ~~This requirement does not apply when there is a protective order in the case~~ If there is a current court order prohibiting contact between the parties, or a history of domestic violence between the self-represented parties, or an allegation of domestic violence, and the alleged victim of the domestic violence is self-represented, the parties are not required to consult regarding whether there is an objection to the motion.

Rule 76(b) Meet-and-Confer and Other Party Duties.

(1) *Generally*. Not less than 5 days before the RMC, the parties must:

(A) confer to resolve as many issues as possible. ~~This requirement does not apply if a~~ If there is a current court order prohibits prohibiting contact between the parties, ~~or they have~~ a history of domestic violence between the self-represented parties, or an allegation of domestic violence, and the alleged victim of the domestic violence is self-represented, the parties are not required to meet and confer. ~~However, in such situations counsel still must take all reasonable steps to resolve as many issues as possible; and~~

It should be noted that there is a similar issue that has been identified arising under Rule 9(c)(2), ARFLP. It provides as follows:

(c) Good Faith Consultation Certificate.

(1) *Generally*. When these rules require a “good faith consultation certificate,” the certificate must demonstrate that a party has made a good faith attempt to resolve the issue. The consultation or attempted consultation required by this rule must be in person or by telephone, and not merely by letter or email.

(2) *Domestic Violence*. If there is a current court order prohibiting contact between the parties or a history of domestic violence between self-represented parties, the

parties are not required to personally meet or contact each other.

Whether now or in the future, consideration should be given to making a similar change to this rule as has been proposed for Rules 34 and

76. That change can be as follows:

(2) *Domestic Violence*. If there is a current court order prohibiting contact between the parties, ~~or~~ a history of domestic violence between the self-represented parties, or an allegation of domestic violence, and the alleged victim of the domestic violence is self-represented, the parties are not required to personally meet or contact each other.

RESPECTFULLY SUBMITTED, this 24 day of May, 2022.

Bruce R. Cohen

BRUCE R. COHEN
Family Court Presiding Judge
Superior Court of Arizona
Maricopa County
125 West Washington, Suite 101
Phoenix, AZ 85003