

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.  
PETITION TO AMEND RULE 48 )  
OF ARIZONA RULES OF FAMILY )  
LAW PROCEDURE )

**BACKGROUND**

This is a proposal to amend Rule 48 of the *Arizona Rules of Family Law Procedure* (ARFLP). In its present form, the rule links matters that are urgent or qualify as an emergency with a request for *ex parte* relief. While emergency matters may also require *ex parte* orders, there are two separate determinations to be made. First, is there an emergency or urgency for the issue to be addressed by the court? Second, should a temporary order without notice be issued pending the accelerated hearing on the emergency or urgent matter?

In its present form, Rule 48 does not make this distinction. Therefore, those who have what they perceive to be an emergency or urgent matter mistakenly conclude that the only relief is to seek temporary orders without

notice. Yet the majority of cases in which this relief is sought result in a court setting an accelerated hearing but denying the *ex parte* portion of the relief sought.

### **EXISTING RULE**

In its present form, the Rule is as follows:

#### Rule 48 - Temporary Orders Without Notice

**(a) Filing and Timing.** A party may request temporary orders without notice by filing a verified motion, along with a proposed form of orders and a notice of hearing on the motion. A motion may be filed at the same time or after filing an initial pre-decree or post-decree petition.

**(b) Grounds.** A court may grant temporary orders without written or oral notice to an adverse party or that party's attorney only if the verified motion:

**(1)** clearly shows by specific facts that if an order is not issued before the adverse party can be heard, the moving party or a minor child of the party will be irreparably injured, or irreparable injury, loss, or damage will result to the separate or community property of the moving party; and

(2) the moving party or attorney provides written certification of the efforts to give notice to the other party, or why giving notice should not be required.

**(c)Orders.** Temporary orders without notice must specify the injury, loss, or damage and why it is irreparable, and state why the court granted the orders without notice. Temporary orders expire at the date and time set for hearing on the motion unless the court extends the time for good cause.

**(d)Hearing.** An evidentiary hearing must be set on the motion not later than 10 days after the order's entry, unless the court extends the time for good cause. The nonmoving party may request an earlier evidentiary hearing with reasonable notice as the court directs.

**(e)Service.** The order and notice of the evidentiary hearing must be served as soon as possible after the order's entry or as the court directs.

**(f)Bond.** No bond is required for temporary orders unless the court finds a bond appropriate.

### **PROPOSED RULE CHANGE**

It is proposed that Rule 48 be amended, as follows:

## Rule 48 – Emergency Temporary Orders

(a) **With Notice.** A party may request emergency temporary orders at the same time or after filing an initial pre-decree or post-decree petition. A court may set the matter for an accelerated hearing only if the verified motion:

- (1) Sets forth the specific relief requested and the specific facts that support that relief; and
- (2) Provides specific facts that establish why an emergency or accelerated hearing is required.

(b) **Without Notice.** A party may request temporary orders without notice by filing a verified motion, along with a proposed form of orders and a notice of hearing on the motion. A motion may be filed at the same time or after filing an initial pre-decree or post-decree petition.

(1) A court may grant temporary orders without written or oral notice to an adverse party or that party's attorney only if the verified motion:

- (A) clearly shows by specific facts that if an order is not issued before the adverse party can be heard, the moving party or a minor child of the party will be

irreparably injured, or irreparable injury, loss, or damage will result to the separate or community property of the moving party; and

**(B)** the moving party or attorney provides written certification of the efforts to give notice to the other party, or why giving notice should not be required.

**(2) Temporary orders** without notice must specify the injury, loss, or damage and why it is irreparable, and state why the court granted the orders without notice. Temporary orders expire at the date and time set for hearing on the motion unless the court extends the time for good cause.

**(3) Upon entry of a temporary order without notice, an** evidentiary hearing must be set on the motion not later than 10 days after the order's entry, unless the court extends the time for good cause. The nonmoving party may request an earlier evidentiary hearing with reasonable notice as the court directs.

**(c) Service. Any order** and notice of the evidentiary hearing must be served as soon as possible after the order's entry or as the court directs.

**(d) Bond.** No bond is required for temporary orders unless the court finds a bond appropriate.

RESPECTFULLY SUBMITTED this 29<sup>d</sup> day of December, 2022.

*Bruce R. Cohen*

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