



in order to secure a hearing on a post-decree matter. Before the rule, the party would file the petition, serve the opposing party, return to the courthouse with proof of service, secure a hearing date upon demonstrating proof of service, and then serve or mail the notice of hearing to the opposing party. Largely at the urging of the Maricopa County Superior Court and its then presiding judge, Norman Davis, this rule was developed so as to reduce the number of required points of contact a litigant would be required to make with the court before a hearing.

Under the now existing rule, the petitioning party files the pleadings, the court issues an Order to Appear, and the party leaves the courthouse with a hearing date. The petitioning party then serves the other party with the entire packet, which includes the Order to Appear for a date-certain hearing. The responding party need not file a responsive pleading and both parties appear for the hearing that was noticed by the court. It is critical to note that the rule has met the goals that were behind the rule; the petitioning party need make only one point of contact with the court in order to secure a hearing date.

However, there have been significant unintended consequences from this required procedural approach. Speaking only for Maricopa County and in applying a cost-benefit analysis, the resulting benefit of the requirement that

an Order to Appear be issued for a post-decree petitioning party has caused a corresponding significant waste of judicial resources. For anywhere between 25% to, at times, 50% of these post-decree scheduled proceedings, the first scheduled hearing date does not proceed. In many such cases, the petitioning party failed to effectuate service of process upon the responding party. In other cases, service of process was effectuated so near to the hearing date that the responding party finds himself or herself to be unprepared or unavailable for the date and time set by the court when the Order to Appear is issued. Additionally, for those responding litigants who seek representation, the time between the date of service and the preset hearing date is not sufficient for retaining an attorney and having that attorney prepared to proceed. In all of these circumstances, the first-scheduled hearing is vacated but, because this occurs immediately before or at the time of the hearing, the judicial time set aside for the hearing cannot be utilized for other matters.

To be clear, this is a widely-experienced problem in Maricopa County but may not be a problem for other courts. The risk for not being able to proceed at the first noticed hearing is exacerbated by the fact that Maricopa County has “specialty court” calendars when Commissioners oversee post-decree matters that are limited to a single issue. These high-volume

calendars allow for timely hearings to be scheduled, which is not as readily available if the matter is heard by the assigned Judge. Therefore, there is generally less time between the date of issuance of the Order to Appear and the date of the noticed hearing.

This petition does not seek a statewide rule to eliminate Orders to Appear for courts or case types in which the current rules are working as intended and are not experiencing any waste of judicial resources. Rather, the proposal below allows each County court, whether on a case-specific issue or as their internal protocols to issue an Order to Appear or require proof of service of process in order to secure a hearing date.<sup>1</sup>

### **EXISTING RULES**

In its present form, the Rule is as follows:

#### **Rule 91**

**(h) Order to Appear.** After filing the petition, the applicant must submit to the assigned judicial officer two copies of an Order to Appear, and a copy of the petition showing the court's filing stamp. An Order to Appear must be substantially in the form set forth in Form 14, Rule 97 (“Order to Appear Post-Judgment”).

## **Rule 92**

**(c) Order to Appear.** The order to appear must specify the date, time, and place of the hearing, and must contain the following notice using substantially the following language:

Failure to appear at the hearing may result in the court issuing a child support or civil warrant for your arrest. If you are arrested, you may be held in jail for up to 24 hours before you see a judge.

### **PROPOSED RULE CHANGE**

It is proposed that Rules 91(h) be amended, as follows:

**(h) Scheduling of hearing.** The court may:

(i) set the hearing date upon the filing of the petition and require that the applicant submit to the assigned judicial officer two copies of an Order to Appear, and a copy of the petition showing the court's filing stamp. An Order to Appear must be substantially in the form set forth in Form 14, Rule 97 (“Order to Appear Post-Judgment”); **or**

**(ii) require the petitioning party to effectuate service of process before setting a hearing date and, upon proof of service being provided to the court, issue a Notice of Hearing that sets the hearing date and is then provided to each party in accordance with the Rules.**

It is proposed that Rules 92(c) be amended, as follows:

**(c) Scheduling of hearing. The court may:**

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<sup>1</sup> The rule should not allow each judicial officer to set his or her own procedures. Rather, the required process should be determined by local rule.

(i) issue an order to appear that specifies the date, time, and place of the hearing; or

(ii) **require the petitioning party to effectuate service of process before setting a hearing date and, upon proof of service being provided to the court, issue a Notice of Hearing that sets the hearing date and is then provided to each party in accordance with the Rules.**

**Whether an order to appear or notice of hearing is issued, it must substantially contain the following language:**

Failure to appear at the hearing may result in the court issuing a child support or civil warrant for your arrest. If you are arrested, you may be held in jail for up to 24 hours before you see a judge.

### **FINAL NOTE**

The specific language suggested above may certainly be improved upon following review. This petition is focused on allowing each County to set its own specific procedures for these matters, utilizing either an Order to Appear, as the existing rules require, or requiring service of proceed to be effectuated in order to secure a hearing date.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of January, 2023.

*Bruce R. Cohen*

**Judge Bruce R. Cohen**

Family Court Presiding Judge

Maricopa County Superior Court

125 West Washington, Suite 101

Phoenix, AZ 85003