

Judge Paul J. McMurdie
Arizona Court of Appeals Division One
State Courts Building
1501 West Washington St
Phoenix, AZ 85007

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	Supreme Court
)	No. R-22-0044
ARIZONA RULES OF FAMILY LAW)	
PROCEDURE 30)	Reply to Comments to Petition to Add Rule
)	30 to Arizona Rules of Family Law
_____)	Procedure

On behalf of the Family Court Improvement Committee, the undersigned replies to comments under Rule 28 of the Arizona Rules of the Supreme Court in response to the Petition to Add Rule 30 to the Arizona Rules of Family Law Procedure. The Family Court Improvement Committee considered the comments from the Maricopa County Superior Court, the Maricopa County Superior Court Clerk, and the Presiding Family Law Judge of Pima County. FCIC agrees with most of the comments. As a result, outlined in Appendix A, the FCIC submits an amended proposal to amend proposed Rule 30 and amendments to Arizona Rules of Family Law Procedure 43.1, 44.1, 45, 47, 47.1, 47.2, 48, and 91.5 as suggested by the comments.

CONCLUSION

The Family Court Improvement Committee respectfully requests that the Court consider this reply and adopt the proposed new rule and amendments to existing rules.

DATED this 22nd day of May, 2023.

Paul J. McMurdie
Chair, Family Court Improvement Committee

APPENDIX A

Rule 30. Right to timely review

a. In every domestic relations action, the parties are entitled to the timely resolution of their disputes. To ensure the matters do not linger unnecessarily, the courts of this state must abide by ~~these~~ time requirements imposed by an applicable statute or procedural rule.

~~1. Upon filing a consent decree under Rule 45 or a default decree or judgment by motion and without a hearing under Rule 44.1, the court must rule on the filing no later than twenty days.~~

~~2. After a hearing on temporary orders under Rules 47, 47.1, or 47.2, the court must issue the temporary orders within twenty days.~~

~~3. Upon petitioning to enforce legal decision making and parenting time under Rule 91.5 and A.R.S. § 25-414, the court must hold a hearing or conference within 25 days of service and rule on the petition no later than twenty days after the hearing.~~

~~4. Upon delivery of a stipulated motion to the assigned judge, the court must rule on the stipulation within seven court days.~~

b. If a party determines that a judge has ignored this rule, the party may petition for special action to enforce the rules. The court of appeals must accept jurisdiction of a special action petition on these rules.

Rule 43.1. Filings, Pleadings, and Other Documents

(a) Filing with the Court Defined. The filing of documents with the court is accomplished by filing them with the clerk. If a judge permits, a party may submit a document directly to a judge, who must transmit it to the clerk for filing and notify the clerk of the date of its receipt.

* * *

(e) Proposed Orders; Proposed Judgments.

(1) *Service.* Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the court.

(2) *Filing.* The clerk may not file a proposed order or proposed judgment. The clerk must accept electronically submitted proposed orders and proposed judgments; however, these electronically submitted documents must not be included in the publicly displayed court record.

(3) *Exception.* If directed by the court, required by rule, or done to preserve the record on appeal, a party may file an unsigned proposed order or proposed judgment as an attachment or exhibit to a notice of lodging or other filing.

(4) *Format.* A proposed order or proposed judgment must be prepared and submitted as a separate document and may not be included as a part of any other document. The proposed order or proposed judgment must have at least two lines of text above the signature.

(5) Stipulations and Motions; Proposed Forms of Order.

(A) All written stipulations must be accompanied by a proposed order. Except as otherwise provided in these rules, the court must rule on any written stipulation within twenty-one days of the stipulation being filed with a notice of lodging and the proposed order included as an attachment. If the proposed order is signed and entered, no minute entry need issue.

(B) If a motion is accompanied by a proposed order, no minute entry need issue if the order is signed and entered.

Rule 44.1. Default Decree or Judgment by Motion and Without a Hearing

(a) Generally. The court may enter a default judgment based on documents in the court's file, on motion and without the parties appearing at a hearing, in the circumstances described in this rule. The party seeking default judgment by motion must file a notice of lodging and attach the proposed default decree and any other documentation required by this rule. The court must rule on the motion within twenty-one days of the lodging date. However,

(1) the court may not enter a default judgment without a hearing that is different from what the petition requested, or for amounts greater than requested in the petition, unless the parties have entered into a written separation agreement under A.R.S. § 25-317;

(2) the court may not enter a default judgment without a hearing if the party in default is a minor or an incompetent person; and

(3) the court may not enter a default judgment without a hearing if the party in default was served by publication.

Rule 45. Consent Decree, Judgment, or Order

(a) Generally. If the petitioner and the respondent agree to the terms of a dissolution, annulment, or legal separation, or to the terms of a paternity or maternity action, they may obtain a consent decree, judgment, or order without a court hearing.

(1) To obtain a consent decree for a dissolution or legal separation, the summons and petition must have been served on the respondent, or the respondent must have accepted service, at least 60 days before the parties ~~file~~ lodge the consent decree.

(2) To proceed with a consent decree for a dissolution of marriage, the parties must jointly file a notice of lodging and include as an attachment a consent decree that is substantially similar to Form 8, Rule 97.

(3) The assigned judge or commissioner must determine whether the parties have met the requirements for a consent decree: and rule on the lodged consent decree within twenty-one days of the lodging date.

Rule 47. Motions for Temporary Orders

(a) Motions for Pre-Decree Temporary Orders. A party seeking temporary orders for legal decision-making, parenting time, child support, or spousal maintenance, or concerning property, debt, or attorney fees, must file a separate verified motion that states the motion's legal and jurisdictional basis and the specific relief requested. The motion must be filed either after or concurrently with the initial petition. The motion must include the following information and documentation, if relevant:

* * *

(i) Local Procedures. Nothing contained in this rule precludes any county from establishing by local rule or administrative order an alternative process for temporary orders.

(j) Time to Review. At the conclusion of a hearing, the court must rule on the motion within twenty-one days.

(k) Enforceability of Temporary Orders.

(1) *When Enforceable.* Temporary orders signed by the court and filed by the clerk are enforceable as final orders but terminate and are unenforceable upon dismissal of the action, or following entry of a final decree, judgment, or order, unless that final decree, judgment, or order provides otherwise.

(2) *Exceptions.* Orders of Protection and Injunctions Against Harassment are not subject to the provisions of this rule.

Rule 47.1. Simplified Child Support Orders

(a) Motion for a Temporary Simplified Child Support Order.

(1) *Generally.* Unless a local rule provides otherwise, a party seeking a temporary child support order under A.R.S. §§ 25-315 or 25-817 may request a simplified order by filing with the court:

- (A) a verified Motion for Simplified Temporary Child Support Order;
- (B) a completed Child Support Worksheet;
- (C) a proposed Simplified Temporary Child Support Order; and
- (D) a proposed Income Withholding Order.

(2) *Required Disclosures.* The moving party must serve the motion with the proposed simplified Temporary Child Support Order and proposed Income Withholding Order. The motion must advise the responding party of a requirement to file a timely response and a completed Child Support Worksheet, and must advise the responding party that failure to do so may result in the court entering the requested Temporary Child Support Order.

(3) *Notice of Hearing.* If the moving party requested a hearing, the moving party must serve the responding party with a notice of hearing.

(4) *Service.* The motion must be served on the responding party in the manner set forth under Rules 40(f)(1) or 41, as applicable. The moving party must file a proof of service as provided in those rules.

(b) Response.

(1) *Timing.* The responding party must file any response not later than 20 days after the motion is served, if served in Arizona, or 30 days after the motion is served, if served outside Arizona.

(2) *Request for Hearing.* At the time of filing a response, the responding party may file a request for hearing. The responding party must serve the response and request for hearing on the moving party under Rule 43.

(3) *Uncontested Motions.* If the responding party does not file a response or if the response does not contest the child support requested in the motion, the court will not set a hearing. The court will enter the proposed Simplified Temporary Child Support Order and the Income Withholding Order if the available information in support of the temporary order appears accurate and provides the court with adequate information to determine the amount of child support under the Arizona Child Support Guidelines.

(c) Time to Review. At the conclusion of a hearing, the court must rule on the motion within twenty-one days.

Rule 47.2. Motions for Post-Decree Temporary Legal Decision-Making, Parenting Time or Child Support Orders

(a) Generally. A party requesting temporary legal decision-making, parenting time or child support after entry of a decree must file a verified motion stating the legal and jurisdictional bases for the motion, and the specific relief requested. The motion must include a proposed parenting plan containing the legal decision-making and parenting time requested for both parties. If the motion requests child support, the party requesting child support must comply with Rule 91.1. The motion must incorporate by reference the relevant allegations of the pending post-decree petition and not separately repeat them.

(b) Timing. The party may file the motion after or at the same time the party files a post-decree petition authorized by statute.

(c) Service. The motion must be served on the responding party in the manner set forth under Rules 40(f)(1) or 41, as applicable.

(d) Scheduling. The court will schedule a resolution management conference or an evidentiary hearing on the motion, as appropriate.

(e) Time to Review. At the conclusion of a hearing, the court must rule on the motion within twenty-one days.

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.

(g) Time to Review. At the conclusion of a hearing, the court must rule on the motion within twenty-one days.

Rule 91.5. Post-Judgment Petition for Enforcement of Legal Decision-Making or Parenting Time; Warrant to Take Physical Custody

(a) Enforcement. A petition for enforcement of legal decision-making, parenting time, or visitation order must comply with Rule 91, and

(1) must meet all legal requirements, including A.R.S. § 25-1058, if applicable,

(2) must include detailed facts supporting a violation of the order or enforcement action and the specific remedy or remedies sought.

(b) Warrant. A petition seeking a warrant to take physical custody of a child must comply with Rule 91 and with A.R.S. § 25-1061

(c) Hearing. Under A.R.S. § 25-414, within twenty-five days of service of the petition, the court must hold a hearing or conference before a judge, commissioner, or person appointed by the court to review noncompliance with a visitation or parenting time order. The court must rule on the petition no later than twenty-one days after the hearing or conference.