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ARIZONA SUPREME COURT

In the matter of:)
)
PETITION TO ADD RULE 30 TO) Supreme Court No. R-22-0044
ARIZONA RULES OF FAMILY LAW)
PROCEDURE) COMMENT
_____)

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Director, Administrative Office of the Courts (“Commentor”), respectfully files this Comment to bring to this Court’s attention concerns regarding potential statutory conflicts related to the amendments to Rules 44.1 and 45, Rules of Family Law Procedure, and to propose alternative verbiage as set forth in the Appendix of this Comment. Commentor also files this comment to propose slightly alternative verbiage for Rules 43.1, 47, 47.1, 47.2, 48, and 91.5 for consistency purposes.

I. Background

On November 28, 2022, Petitioner filed petition R-22-0044 to add a new Rule 30 to the Rules of Family Law Procedure to impose deadlines for judges to enter certain types of rulings or orders. This Court opened the petition for public comment

until June 1, 2023 to consider the petition at its August 2023 Rules Agenda. Based on the comments received, Petitioner substantially revised the petition and its proposed rule amendments. On August 24, 2023, this Court adopted the revised proposal, with some modifications, on an emergency basis and effective January 1, 2024. In doing so, this Court reopened the comment period until October 2, 2023 to consider public comments on the revised proposal and determine at its December 2023 Rules Agenda whether the amendments should be permanently adopted.

II. Comment to Amendments

In addition to adding a new Rule 30, Petitioner’s revised proposal amends Family Law Rules 43.1, 44.1, 45, 47, 47.1, 47.2, 48, and 91.5. Commentor proposes amendments to Rules 43.1, 44.1, 45, 47, 47.1, 47.2, and 48 for the reasons that follow.

A. Rules 44.1 and 45

On August 24, 2023, this Court adopted the following amendment to subpart a of Rule 44.1 (“Default Decree or Judgment by Motion and Without a Hearing”), (additions underlined):

(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 21 days of the lodging date. However,

Requiring courts to rule on all motions for default judgments will become problematic in some cases due to the requirement of A.R.S. § 25-329 that imposes a 60-day waiting period in dissolution and legal separation cases. Specifically, A.R.S. § 25-329 states, “[t]he court shall not consider a submission of a motion supported by affidavit or hold a trial or hearing on an application for a decree of dissolution of marriage or legal separation until sixty days after the date of service of process or the date of acceptance of process.”

If a respondent is served in Arizona and fails to respond within 20 days of service, the petitioner can file an application for default as early as day 21. Under Family Court Rule 44, default becomes effective 10 days later if the respondent fails to respond. The petitioner is then eligible to file a motion for default judgment without a hearing on day 32. Under Rule 44.1(a) as amended, the court would be required to rule on this motion by day 53, which would violate A.R.S. § 25-329.

Similarly, if a consent decree is lodged before the 60-day waiting period has passed, the court may not be able to rule on the consent decree within 21 days without violating A.R.S. § 25-329. Although current Rule 45(a)(1) provides that the parties must wait until 60 days has passed since the respondent was served before lodging the consent decree, many parties lodge the decree before the 60 days expires. It is possible that a court could hold an early decree and then make a ruling once the decree is ripe, but if the court is required to make a ruling within 21 days of lodging,

without more, courts may be forced to reject consent decrees that are lodged too early so that statute and rule timing requirements are not violated.

Accordingly, Commentor believes that Rules 44.1 and 45 need to be further amended to clarify that the 60-day waiting period must have passed before the 21-day timeframe for ruling is triggered.

After consultation with family court judges in the counties of Maricopa, Pima, and Yavapai, Commentor proposes further amending Rules 44.1 and 45 as set forth in the Appendix to this comment. Commentor believes the amendments as set forth in the Appendix retain Petitioner's intent related to establishing timeframes for ruling on motions for default judgments and consent decrees. The proposed amendments are summarized as follows:

- Rule 44.1(a) (“Generally”). Since the filing of the motion for default, and not the notice of lodging and proposed default decree, will trigger the 21-day ruling requirement, Commentor proposes striking from Rule 44.1(a) the verbiage “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 21 days of the lodging date.”
- Rule 44.1(b) (“Decree of Dissolution, Annulment, or Separation”). Commentor proposes adding a new subpart (4) to specifically address

the timing for the court to act on a motion for default judgment, which differs depending on whether the 60-day waiting period has passed when the motion is filed. This new subpart (4) is further parsed into a section (A) and (B) to differentiate between dissolution or legal separation petitions and petitions for annulment, since the 60-day waiting period does not apply to petitions for annulment.

- Rule 44.1(c) (“Judgment of Maternity or Paternity”) and (d) (“Money Judgments and Attorney Fees”). Commentor proposes adding a new subpart (3) to Rule 44.1(c) and (d) to clarify that the court must rule on motions under these subparts no later than 21 days after the date the motion is filed, unless Rule 44.1(b)(4)(A) applies.
- Rule 45 (“Consent Decree, Judgment, or Order”). Commentor proposes amending Rule 45(a)(1) regarding the requirement that parties can only lodge a consent decree for dissolution or legal separation if 60 days have passed since service. The purpose of this amendment is to address consent decrees that may be lodged early, so the court can accept and hold the consent decree until it is ripe for ruling rather than reject it. Commentor instead proposes explanatory verbiage related to the 60-day waiting period under A.R.S. § 25-329. Commentor also proposes amending Rule 45(a)(3) to add new subparts (A) and (B), which mirror

Rule 44.1(b)(4)(A), regarding the required timeframes for ruling on a consent decree, judgment, or order, which will be dependent upon whether the 60-day waiting period in A.R.S. § 25-329 has passed when the consent decree, judgment, or order is lodged. Lastly, Commentor proposes amending the rule to change “must jointly file a notice of lodging and include as an attachment a consent decree” to “must jointly file a notice of lodging and lodge a consent decree” to account for e-filing limitations in certain counties that do not allow a decree to be attached to a notice of lodging.

B. Rules 43.1, 47, 47.1, 47.2, and 48

The amendments to Rules 43.1, 47, 47.1, 47.2, and 48 as adopted require the court to make a ruling “within 21 days,” while Rule 91.5 requires the court to make a ruling “no later than 21 days after . . .” For consistency purposes, Commentor proposes amending Rules 43.1(e), 47(j), 47.1(c), 47.2(e), and 48(g) as set forth in the Appendix to reflect “no later than 21 days after,” as is reflected in Rule 91.5.

C. Rule 45.1 (“Summary Consent Decree”)

Rule 45.1 addresses the requirements for a summary consent decree filed under A.R.S. § 25-314.01. The rule amendments as proposed by Petitioner did not include an amendment to Rule 45.1 to require a timeframe in which a court must rule on a summary consent decree. Commentor takes no position on whether Rule

45.1 should include such an amendment but points this out in the event that Petitioner believes an amendment to Rule 45.1 is prudent, in order to align Rule 45.1 with the amendments to the other rules amended by R-22-0044.

III. Conclusion

For the foregoing reasons, Commentor respectfully recommends that if this Court is inclined to permanently adopt the amendments to Rules 30, 43.1, 44.1, 45, 47, 47.1, 47.2, 48, and 91.5 of the Arizona Rules of Family Law Procedure, that it adopt the amendments to Rules 43.1, 44.1, 45, 47, 47.1, 47.2, and 48 as set forth in the Appendix to this Comment.

Respectfully submitted this 2nd day of October, 2023.

By /s/ Marcus Reinkensmeyer
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behalf of David K. Byers, Administrative
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Appendix

(Additional text is shown by underline, deleted text is shown by ~~strikethrough~~)

Arizona Rules of Family Law Procedure

Rule 43.1. Filings, Pleadings, and Other Documents

(a)–(d) [No change]

(e) **Proposed Orders; Proposed Judgments.**

(1)–(4) [No change]

(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 no later than~~ 21 days of ~~after~~ the date the stipulation being is 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) [No change]

(f)–(h) [No change]

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 21 days of the lodging date.~~ However,

(1) through (3) [No change]

(b) **Decree of Dissolution, Annulment, or Separation**

(1) through (3) [No change]

(4) Acting on the Motion. The court must act on the motion in a timely manner as provided by this subpart.

(A) For petitions for dissolution or legal separation, the court must notify the appearing parties that the motion has been set for hearing or rule on the motion no later than:

(i) 21 days after the filing date of the motion if the motion was filed 60 days or more after the effective date of service of the petition; or

(ii) 81 days after the effective date of service of the petition if the motion was filed less than 60 days after the effective date of service.

(B) For petitions for annulment, the court must notify the appearing parties that the motion has been set for hearing or rule on the motion no later than 21 days after the filing date of the motion.

(c) Judgment of Maternity or Paternity.

(1) and (2) [No change]

(3) Acting on the Motion. The court must notify the appearing parties that the motion has been set for hearing or rule on the motion no later than 21 days after the filing date of the motion.

(d) Money Judgments and Attorney Fees.

(1) and (2) [No change]

(3) Acting on the Motion. Unless Rule 44.1(b)(4)(A) applies, the court must notify the appearing parties that the motion has been set for hearing or rule on the motion no later than 21 days after the filing date of the motion.

(e)-(g) [No change]

Rule 45. Consent Decree, Judgment, or Order

(a) [No change in text]

(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 lodge the consent decree~~ A.R.S. § 25-329 provides for a 60-day waiting period which begins on the date the respondent was served with the summons and complaint, or the date on which an acceptance of service is filed with the clerk, whichever is earlier.

(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 lodge 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, judgment, or order and set the matter for hearing or rule on the lodged consent decree, judgment, or order within 21 days of the lodging date no later than:

(A) For petitions for dissolution or legal separation,

(i) 21 days after the lodging date if the decree, judgment, or order was lodged 60 days or more after the effective date of service of the petition; or

(ii) 81 days after the effective date of service of the petition if the decree, judgment, or order was lodged less than 60 days after the effective date of service.

(B) For all other matters, no later than 21 days after the lodging of the decree, judgment, or order.

(b)-(c) [No change]

Rule 47. Motions for Temporary Orders

(a)-(i) [No change]

(j) Time to Review. ~~At the conclusion of a hearing, t~~The court must rule on the motion within no later than 21 days after the date the hearing is concluded.

(k) [No change]

Rule 47.1. Simplified Child Support Orders

(a)-(b) [No change]

(c) Time to Review. ~~At the conclusion of a hearing, t~~The court must rule on the motion within no later than 21 days after the date the hearing is concluded.

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

(a)-(d) [No change]

(e) Time to Review. ~~At the conclusion of a hearing, t~~The court must rule on the motion within no later than 21 days after the date the hearing is concluded.

Rule 48. Temporary Orders Without Notice

(a)-(f) [No change]

(g) Time to Review. ~~At the conclusion of a hearing, t~~The court must rule on the motion within no later than 21 days after the date the hearing is concluded.