

Judge Joseph Welty
Presiding Judge
Superior Court of Arizona in Maricopa County
125 W. Washington St., Ste. 309
Phoenix, AZ 85003

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of Emergency Petition to Amend Rule 6, Arizona Rules of Family Law Procedure	Supreme Court No.
---	-------------------

Pursuant to Rule 28 of the Rules of the Supreme Court, the Family Department of the Superior Court of Arizona in Maricopa County respectfully petitions the Court for modifications to Rules 3 and 6 of the Arizona Rules of Family Law Procedure. Further, we request expedited consideration of this Petition pursuant to Supreme Court Rule 28(h)(1) and the issuance of an emergency order pursuant to Supreme Court Rule 28(h)(2).

BACKGROUND

Arizona is one of approximately 18 states that has a preemptory change of judge rule. We seek no modification to those rules, their procedure, or effect. On November 26, 2024, Division One of the Arizona Court of Appeals issued an opinion in *Sobrino v. Fisk*, -- P.3d --, 2024 WL 4887123 (11/26/2024), interpreting the word “action” in Rule 6 to include any post-

decree petition filed pursuant to Rule 23. The Court of Appeals found that the trial court erred when it relied on *Hofstra v. Mahoney*, 108 Ariz. 498 (1972), in which the Arizona Supreme Court held that a petition to modify a decree of dissolution is a continuation of the prior action—not a new or independent action—especially when the petition has the “same title and number as that of the original case.” The Court of Appeals reasoned that *Hofstra* addressed a request for change of judge under the Arizona Rules of Civil Procedure as they existed in 1972, not the Arizona Rules of Family Law Procedure, which were adopted in 2006 and restyled in 2019.

For the reasons stated below, we propose that the Supreme Court modify Rules 3 and 6 of the Arizona Rules of Family Law Procedure to be consistent with the holding in *Hofstra*. Our proposal is not intended as a criticism or comment on the Appellate Court’s ruling. Moreover, in filing this emergency petition, we acknowledge that additional changes to Rule 6 may warrant consideration. The goal of filing this petition is to return to the *status quo ante*, while both (1) allowing stakeholders the opportunity to propose, evaluate, and comment on changes; and (2) providing the trial courts sufficient time to adjust their case assignment and case management systems to comply with any changes to litigants’ exercise of peremptory changes of judge.

IMPACTED RULES AND PROPOSAL

This petition proposes rule amendments to incorporate the reasoning in *Hofstra* to the Arizona Rules of Family Law Procedure, *i.e.*, party to a family law case will be entitled to one preemptory change of judge during the life of the case, and not each time they file a post-decree petition or a petition for civil contempt pursuant to Rule 92.

Specifically, we propose adding to Rule 3 the following definition of the term “family law case”:

A “**family law case**” is a court case assigned a unique case number upon the filing of an initial pleading under Rule 23. The filing of a post-decree petition under Rule 23, including a petition for civil contempt under Rule 92, does not create a separate family law case.

As reflected in Appendix 2, the term “family law case” is used throughout the Arizona Rules of Family Law Procedure—as well as other procedural rule sets—but it is never defined. The proposed definition comports with how “family law case” is used throughout the various Arizona rule sets.

We further propose amending Rule 6 to replace nearly all uses of the word “action” with the word “family law case.” The specific language changes are identified in Appendix 1. Finally, we suggest an additional (though optional) modification to Rule 6 to add a new section (g), which would expressly provide that a party to a family law case who has not already

exercised their notice of change of judge has a right to do so when filing a post-decree petition if the assigned judge has not previously ruled on a contested issue or held a conference in the case.

NEED FOR RULE CHANGE

If parties can file a peremptory change of judge for *each* Rule 23(a) petition or each petition for civil contempt pursuant to Rule 92, we foresee the following issues:

1. Without amendment, parties are incentivized to file post-decree petitions to obtain a peremptory change of judge when they are dissatisfied with a prior judicial officer's ruling. Without amendment, gamesmanship is rewarded for each new petition filed.
2. There are often multiple post-decree petitions pending in a family law case: for example, a petition for modification, a petition to enforce, and a petition for contempt. The *Sobrino* decision allows each party to file a change of judge for each post-decree petition. If multiple post-decree petitions were pending at the same time, the Superior Court could conceivably consolidate these "actions," but this cannot be done instantaneously. *See, e.g.*, Rule 91(i)(1) (requiring that the trial court review each post-decree petition to determine whether to reject the petition or issue an order to appear). A party

merely needs to file a new post-decree petition and a notice of change of judge at the same time to avoid consolidation of two separate post-decree “actions.”

3. The number of peremptory changes of judge will increase exponentially if parties are able to obtain a peremptory change of judge with every post-decree petition or petition for civil contempt that is filed. This increase will negatively affect litigants, children, and the courts.

First, it inevitably will cause delays, which harm both litigants and their children. When a peremptory change is filed, the trial court must vacate hearings and reset them on a different judicial officer’s calendar. This almost always causes delay in ultimate resolution given the congestion of family division calendars. By way of example: In one recent case, Petitioner filed a contempt petition in July 2024, which was set for hearing on December 11, 2024. Respondent filed a second contempt petition in October 2024 and then filed a notice of change of judge in late November 2024. The trial on the Petitioner’s contempt petition was vacated, the case was reassigned to a new judge, and the matter has yet to be reset for trial. The earliest available trial date on the newly assigned judge’s calendar is in February 2025.

Allowing a peremptory challenge for post-decree petitions also enables the parties to “game” the system to stall the case or delay a trial. If the assigned

judge denies a continuance of a trial, a party may simply file an additional post-decree petition along with a peremptory challenge, which results in the case be continued to another day on a different judge's calendar.

Second, in smaller counties with a limited number of judges, the ruling will result in more cases being referred to out-of-county judges. Over the life of a contentious family law case, parties may file dozens of post-decree petitions, especially when there are numerous enforcement issues. If the parties exercise their new right to notice the judge for each new petition, this will result in several judges handling the case, potential referrals to other counties, delayed rulings, and a waste of judicial resources.

A similar problem exists in Maricopa County, which has 28 Family judges assigned to four different regional districts: Downtown (6 judges); Northeast (8 judges); Northwest (2 judges); and Southeast (12 judges). *See* Maricopa County Local Rules 10.1 & 10.2. Regional district assignments are based on the zip code of the petitioner, or the petitioner's attorney if represented. *See id.* When a peremptory change of judge is filed, the Family Department Presiding Judge reassigns the case to another judge assigned to the regional district. Maricopa County Local Rule 10.3(c). If multiple peremptory changes of judge are allowed, the parties could end up being transferred to multiple different regional districts.

Third, repeatedly reassigning cases will increase time it takes to administer changes of judge. In Maricopa County, for the twelve-month period from July 2023-June 2024, over 400 notices of change of judge were filed (pursuant to both Rule 6 and Rule 6.1). If notices of change of judge were allowed for *every* post-decree petition, the Family Department will have to employ additional staff to review and process notices of change of judge and determine which judges could be assigned any “new action.”

4. The *Sobrino* case holds that Rule 6(b), ARFLP, allows a party to file a notice of change of judge as a matter of right “for that new action.” This holding is somewhat ambiguous: If the party files a notice of change of judge “for that new action,” is the *whole case* transferred to a new judge, or only the *new action*? If only the new action is transferred a new judge, this creates piecemeal litigation, with certain “actions” within a single family law case being heard by one judge and other “actions” being heard by other judges. This has the potential to confuse court staff and litigants, create inconsistent rulings by different judicial officers, and delay case processing. Moreover, at least in Maricopa County, the trial court’s case management system is not designed to have multiple judicial officers assigned to a family law case at the

same time.¹ All case management, filings, internal reports, and reports to the Supreme Court are based on each case being administered by a single judge.

In holding that parties do not have the right to a notice of change of judge for a post-decree action in a family court case, the *Hofstra* decision stressed the value of having the judge who tried the case—and who is therefore in the best position to determine the questions involved—decide any post-decree petition. However, we recognize that there are cases in which parties have not exercised their Rule 6 change of judge during the pre-decree proceedings and a new judge is assigned to the family law case by the time a post-decree petition is filed. To make clear that a party to a family law case retains their preemptory change of judge under these circumstances, the Supreme Court might consider adding a new section (g) with the following language:

¹ As approved by the Supreme Court, Maricopa County assigns single-issue enforcement or child support modification petitions to commissioners to be heard on an expedited basis. See Maricopa County AO2007-022 *In the Matter of the Promulgation and Publication of Revised Plan for Expedited Process and Creation of Various Post-Decree Specialty Courts for Expedited Process* (issued 02/23/2007). The family law case, however, remains assigned to the original judge in the court's case management system. The commissioner retains discretion to refer the petition back to the assigned judge when appropriate. Complex or multi-issue petitions and all petitions to modify legal decision-making or parenting time are all referred to the assigned judge.

(g) Post-Decree Petitions. In proceedings on a post-decree petition, the right to a change of judge is renewed and no event connected with prior proceedings constitutes a waiver if:

(1) the judge assigned to preside over the post-decree proceeding has not previously ruled on a contested issue or held a hearing or conference in the family law case; and

(2) the party seeking a change of judge has not previously exercised the party's right to a change of judge in the family law case.

This optional language is proposed to provide clarity for litigants as to whether and when a party may file a notice of change of judge in a post-decree matter.

NEED FOR EXPEDITED CONSIDERATION AND EMERGENCY ORDER

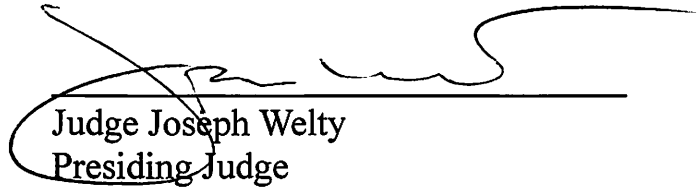
Following the *Sobrino* ruling, parties have begun to exercise their right to file notices of change of judge with their post-decree petitions. The effect of allowing parties to file a peremptory notice of change of judge with the filing of *each* post-decree petition or petition for civil contempt pursuant to Rule 92 has already caused significant delays in some cases and is hampering the trial courts' ability to effectively and efficiently manage and resolve cases. Importantly, these delays will inevitably negatively affect the best interest of

///

///

children. Expedited consideration and an emergency order is necessary to mitigate or eliminate these adverse effects on litigants, children, and the trial courts.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read "Joseph Welty", is written over a horizontal line. The signature is fluid and cursive.

Judge Joseph Welty
Presiding Judge
Maricopa County Superior Court
125 West Washington, Suite 101
Phoenix, AZ 85003

Electronic copy filed with
the Clerk of the Arizona Supreme Court
this 19th day of December, 2024.

APPENDIX 1: DRAFT OF PROPOSED RULE CHANGES

For ease of review, additions are indicated by **bold underline**; deletions are indicated by ~~bold strike-through~~.

Rule 3. Definitions

[No changes to section a – j]

(k) Family Law Case. A “family law case” is a court case assigned a **unique case number upon the filing of an initial pleading under Rule 23.** **The filing of a post-decree petition under Rule 23, including a petition for civil contempt under Rule 92, does not create a separate family law case.**

Rule 6. Change of Judge as a Matter of Right

(a) Definitions.

(1) *Judge.* The term “judge” as used in this rule and Rule 6.1 refers to any judge, judge *pro tem*, or court commissioner.

(2) *Presiding judge.* The term “presiding judge” as used in this rule refers to the presiding superior court judge in the county where the **action family law case** is pending, or that judge's designee.

(b) Generally. In each **action family law case**, whether single or consolidated, each party is entitled as a matter of right to a change of judge.

(c) Notice Requirements. A party seeking a change of judge as a matter of right must either file a written notice, or make an oral request on the record, in the manner provided below:

(1) *Written Notice.* A written notice of change of judge must be served on all other parties, the presiding judge, the noticed judge, and the court administrator, if any, by any method provided in Rule 43(b).

The notice must contain:

(A) the name of the judge to be changed;

(B) a statement that:

(i) the notice is timely under Rule 6(d);

(ii) no waiver has occurred under Rule 6(e); and

(iii) the party has not been granted a change of a judge as a matter of right previously in the **action family law case**. The notice cannot specify grounds for the change of judge.

(2) *Oral Notice*. An oral request for change of judge must include the information required by Rule 6(c)(1)(A) and (B). When made, it is deemed to be an “oral notice of change of judge” for purposes of this rule. The judge must enter on the record the date of the oral notice, the requesting party's name, and the judge's disposition of the request. A party obtaining a change of judge based on an oral notice is deemed to have exercised its right to a change of judge under Rule 6(b). For purposes of this rule, an oral notice is deemed “filed” on the date that it is made on the record.

(d) Time Limits. A party is precluded from obtaining a change of judge as a matter of right unless the party files a timely notice.

(1) The notice must be filed 60 or more days before a scheduled contested hearing or trial.

(2) If a new judge is assigned within 60 days of a scheduled contested hearing or trial, a notice is timely filed as to the newly assigned judge if filed within 10 days after the party receives notice of the new assignment, or within 10 days after the new judge is assigned, whichever is later.

(3) If a party has received less than 10 days' notice of a proceeding or the assignment of the judge, the party must file a notice at least 3 days before the proceeding.

(4) If a party has received less than 5 days' notice of a proceeding or a judge assignment, the party may file a notice of change of judge at any time before the proceeding begins.

(5) If the right to a change of judge is renewed under Rule 6(f), a notice is timely if filed within 15 days after issuance of the appellate court's mandate under ARCAP 24.

(e) Waiver. A party waives the right to change a judge assigned to preside over any proceeding in the **action family law case**, if:

(1) the party agrees to the assignment;

(2) the judge rules on any contested issue, or grants or denies a motion to dispose of any claim or defense, if the party had an opportunity to file a notice of change of judge before the ruling is made;

(3) a resolution management, scheduling, pretrial, or similar conference begins; or

(4) a scheduled contested hearing or trial begins.

(f) Actions Remanded from an Appellate Court. In actions remanded from an appellate court, the right to a change of judge is renewed and no event connected with the first trial constitutes a waiver:

- (1) if the appellate decision requires a new trial or contested hearing; and
- (2) the party seeking a change of judge has not previously exercised the party's right to a change of judge in the ~~action~~ **family law case**.

[OPTIONAL CHANGE SPECIFICALLY ADDRESSING POST-DECREE PETITIONS:]

(g) Post-Decree Petitions. In proceedings on a post-decree petition, the right to a change of judge is renewed and no event connected with prior proceedings constitutes a waiver if:

- (1) the judge assigned to preside over the post-decree proceeding has not previously ruled on a contested issue or held a hearing or conference in the family law case; and**
- (2) the party seeking a change of judge has not previously exercised the party's right to a change of judge in the family law case.**

(g) (h) Procedures on Notice.

(1) *On Proper Notice.* If a notice is timely filed and no waiver has occurred, the judge named in the notice should proceed no further in the ~~action~~ **family law case** except to make such temporary orders as are necessary to prevent immediate and irreparable injury, loss, or damage from occurring before the ~~action~~ **family law case** can be transferred to another judge. If the named judge is the only judge in the county, that judge may also reassign the case.

(2) *On Improper Notice.* If the court determines that the party who filed the notice is not entitled to a change of judge, the named judge may proceed with the ~~action~~ **family law case**.

(3) *Reassignment.*

(A) *On Stipulation.* If a notice of change of judge is filed, the parties should inform the court in writing whether they have agreed on an available judge who is willing to hear the ~~action~~ **family law case**. An agreement of all parties may be honored and, if so, bars further changes of judge as a matter of right unless the agreed-on judge becomes unavailable. If a judge to whom an ~~action~~ **family law case** is assigned by agreement later

becomes unavailable because of a change of calendar assignment, death, illness, or other incapacity, the parties may assert any rights under this rule that existed immediately before the assignment to that judge.

(B) Absent Stipulation. If no judge is agreed on, the presiding judge must promptly reassign the ~~action~~ **family law case**.

**APPENDIX 2:
USES OF “FAMILY LAW CASE”
IN ARIZONA PROCEDURAL RULES**

All uses of the term “family law case” are indicated by *bold italics*.

ARIZONA RULES OF FAMILY LAW PROCEDURE

Rule 1 Scope and Applicability of These Rules

(a) Scope. These rules govern procedures in *family law cases* and all matters arising under Title 25 of the Arizona Revised Statutes.

Rule 5 Consolidation

(a)(4) Orders of Protection. The court may not consolidate a case involving an order of protection with a *family law case* but may conduct a joint hearing.

Rule 10 Representation of Children

(b) Grounds. The court may appoint an attorney to represent a child in a *family law case* under A.R.S. § 25-321 for any reason the court deems appropriate.

Rule 23 Pleadings: Petition and Response

(a) Petition. A “petition” is the initial pleading that begins a *family law case* or a post-decree matter. A party begins an action by filing a verified petition seeking [omitting 11 listed subparts].

Rule 37.1 Appointment of a Guardian ad Litem for an Alleged Incapacitated Person or an Adult in Need of Protection

(b) GAL's Qualifications. A GAL appointed under this rule must be an attorney licensed to practice in Arizona. A GAL must not have ever represented any of the parties; must not be related to any party or to a party's attorney; and must have no personal interest in the *family law case*.

(d) Role. The role of a GAL appointed under this rule is limited to investigating whether the adult party for whom the GAL was appointed (hereinafter referred to as the “subject person”) may be in need of a guardian, conservator, or other protective order under Title 14 of the Arizona Revised Statutes, and, if so, to initiate and prosecute proceedings under Chapter 5 of Title 14 of the Arizona Revised Statutes. The GAL does not represent the subject person in the family law proceeding and may not be called to testify in that proceeding or be asked to advise the subject person or the court on any pending issue in the *family law case* except on whether the subject person may be in need of a guardian, conservator, or other protective order under Title 14 of the Arizona Revised Statutes.

(h) Independent Evaluation. On the GAL's motion, or on its own initiative, the court may order an evaluation of the subject person by a licensed physician to assist the GAL in determining whether the adult party is an incapacitated person or an adult in need of protection. The physician must provide the results of that evaluation only to the guardian ad litem, and the evaluation is not subject to discovery in the *family law case*.

(i) Report. Within the time set by the court, the GAL must file in the *family law case* a report regarding the status and results of the GAL's investigation, including whether the GAL, or anyone else, intends to or has initiated guardianship proceedings, conservatorship proceedings, or both. If the report contains privileged or confidential information, the GAL must request to file the report under seal. The GAL must provide the parties to the *family law case* with a copy of the report but not any privileged or confidential information.

Rule 46 Dismissal

(a)(1) Voluntary Dismissal. *By Notice, Motion, or Stipulated Order.* The petitioner may dismiss a *family law case*, or an applicant under Rule 91 may dismiss a post-decree petition [omitting 3 listed subparts].

Rule 66 Duties to Consider and Attempt Settlement by Alternative Dispute Resolution (“ADR”)

(a) Purpose. These rules encourage the resolution of *family law cases* using non-adversarial means of alternative dispute resolution (“ADR”) to the greatest extent possible, whether through a program overseen, administered,

or authorized by the court, or by a person or agency independent of the court.

Rule 68 Conciliation Court

(c) Mediation/ADR. All *family law cases* that involve a dispute over legal decision-making or parenting time are subject to mediation or other alternative dispute resolution (“ADR”) process under local rules.

Rule 92 Civil Contempt and Sanctions for Non-Compliance with a Court Order

(a) Applicability. This rule governs civil contempt proceedings in *family law cases*. Its procedures and sanctions are in addition to the procedures and sanctions for a child support arrest warrant under A.R.S. §§ 25-681 et seq.

Rule 95 Other Family Law Services and Resources

(a) Generally. The court in a family law case may consider the services set forth in this rule, if available. The court must determine on the record whether the parties have the ability to pay for services as well as allocate the costs of those services.

ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE

Rule 2. Applicability of Other Rules

To the extent not inconsistent with these rules, the *Arizona Rules of Family Law Procedure* apply to protective order matters heard in conjunction with pending *family law cases*. In all other cases, the *Arizona Rules of Civil Procedure* apply when not inconsistent with these rules.

Rule 27 Cross Petitions

(c) Case Numbers. The cross petition may be assigned a new case number or a case number associated with a pending *family law case* in superior court. But if a court assigns the same number to a *family law and a protective order case*, the court cannot allow remote electronic access to any

case information regarding the registration, filing of a petition for, or issuance of the protective order, if such publication would be likely to reveal to the general public the identity or location of the party protected by the order. *See* Rule 123(g)(1)(E)(ii) and (iii), *Rules of the Supreme Court*. *See also* 18 U.S.C. § 2265(d)(3).

ARIZONA JUVENILE COURT RULES OF PROCEDURE

Rule 419 Notice of Completed Adoption

(d) Search Results; Notice of Completed Adoption (Form 8). If the clerk's search confirms the existence of a child support order, the clerk must take the following action, as applicable, no later than 30 days after entry of the adoption order.

- (1) If there is a child support order in a Title IV-D case, whether it is an in-state or out-of-state order, the clerk must transmit a completed Notice of Completed Adoption, Form 8, to the Arizona IV-D agency.
- (2) If there is a child support order in an in-county, non-IV-D case, the clerk must send a completed Form 8 to the last known address of the parties in the *family law case* and their attorneys of record.
- (3) If there is a child support order in an out-of-county, non-IV-D case, the clerk must transmit a completed Form 8 to the clerk of that county. The receiving clerk also must send a completed Form 8 to the to the last known address of the parties in the *family law case* and their attorneys of record; or
- (4) If a child support order is listed on Form 7 for an out-of-state court in a non-IV-D case, the clerk must send a completed Form 8 to the address of the parties listed on Form 7.
- (5) After completing the responsibilities specified above, the clerk must file Form 8 in the Arizona *family law case*, if an Arizona case has been identified, as a confidential record under Rule 43.1(h) of the Rules of Family Law Procedure.