

Greg Sakall
Judge, Division 23
Pima County Superior Court
110 W Congress
Tucson, AZ 85701
Telephone: (520) 724-8301
datascoe@courts.az.gov

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of)	Arizona Supreme Court No. R-23-0008
)	
PETITION TO AMEND RULES)	
91(h) AND 92(c),)	
ARIZONA RULES OF FAMILY)	COMMENT OF THE
LAW PROCEDURE)	COFC
)	
_____)	

Former Maricopa County Superior Court Family Court Presiding Judge Bruce R. Cohen filed the pending Petition seeking to amend Rules 91(h) and 92(c), Arizona Rules of Family Law Procedure (ARFLP), to allow the Superior Court in each county to have the option of issuing an Order to Appear or Notice of Hearing either before or after service of process is effectuated.

By Referral Letter, this Court referred the matter to the Committee on Family Court (“COFC”) for further research and stakeholder discussion.

COFC has reviewed the Petition, and obtained stakeholder input. At its May 15, 2025 meeting, the Committee on Family Court (“COFC”), f.k.a. Family Court Improvement Committee, voted unanimously to support an alternative proposal set forth below.

COFC believes the Petition highlights an issue that should be addressed in a rule change; however, it believes the better solution to the concerns raised in the Petition is to allow the family court to set a new type of hearing—a return hearing. The return hearing would be something less than a resolution management conference or evidentiary hearing. It would be a hearing where the family court could inquire as to whether service has been effectuated, and in the court’s discretion, schedule a resolution management conference or evidentiary hearing, order the parties to meet and confer, or order dismissal under Rule 91(k), if appropriate. The family court could also make any additional orders that it finds appropriate to ensure a timely resolution of the petition.

In crafting the alternative proposal creating a return hearing, COFC believes that Rule 76.2, ARFLP, should be amended to include the new return hearing to ensure that parties will participate in the return hearing in good faith, and allow the family court to impose sanction if a party fails to do so.

This alternative proposal includes the support of the various stakeholder groups represented on the COFC, including the current Maricopa County Superior Court Family Department Presiding Judge Ronda Fisk and Judge Randi Burnett, Pima County Superior Court Family Court Presiding Judge.

For the foregoing reasons, the COFC respectfully request that the Court deny the Petition, and adopt the following alternative proposal with modifications to Rules 76.2, 91, and 92:

Rule 76.2. Sanctions for Failure to Participate in a Court Proceeding

(a) Grounds for Imposing Sanctions. In a pre-judgment or post-judgment proceeding, the court upon motion or its own initiative may impose sanctions if a party or attorney:

- (1) fails to obey a scheduling or pretrial order;
- (2) fails to appear at a return hearing, a Resolution Management Conference, a scheduling conference, an evidentiary hearing, a trial, or other scheduled hearing;
- (3) is substantially unprepared to participate in a return hearing, conference, hearing or trial;
- (4) fails to participate in good faith in a return hearing, conference, hearing, or trial, or in preparing a resolution statement, scheduling statement, or pretrial statement.

(b)-(c) No changes

Rule 91. Modification or Enforcement of Judgment

(a) – (h) No changes

(i) Initial Review of Petitions.

- (1) *Setting a Conference or Hearing or Rejecting a Petition.* Upon receipt of the petition and proposed Order to Appear, the court must review the petition and (a) reject the petition for failure to state grounds upon which relief can be granted, or (b) issue the Order to Appear. If the court rejects the petition, the

court must provide the applicant with an explanation of the deficiency and provide an opportunity to correct the deficiency within 30 days after the date of the rejection notice. In deciding whether to reject a petition, the court cannot assess credibility or weigh evidence. If the court issues the Order to Appear, it must set a return hearing, resolution management conference, or evidentiary hearing, as appropriate. No evidence may be taken at a return hearing or resolution management conference except under emergency circumstances.

(2) – (3) No change

(4) Scope of Return Hearing. At a return hearing, the court may inquire as to whether service has been effectuated, and in the court’s discretion, schedule a resolution management conference or evidentiary hearing, order the parties to meet and confer, or order dismissal under Rule 91(k), if appropriate. The court may make any additional orders that the court finds appropriate to ensure a timely resolution of the petition.

(j) Manner and Timing of Service. The applicant must serve the petition, and every order, warrant, and affidavit in support of the petition, on all other parties in the manner required under Rules 40(f)(1) or 41, as applicable. The applicant must make good faith efforts to complete service promptly and within 10 days after the receipt of the issued order to appear but must complete service in no event later than 5 days before a return hearing or 20 days before the a resolution management conference or evidentiary hearing.

(k) – No change

(l) Responses; Time for Response. Unless a statute or rule requires otherwise, a party served with a petition may, but is not required to, file a response to the petition. However, if a party chooses to respond or when these rules specifically require a response, the responding party must file and provide a copy of the response to the applicant or, if represented, the

applicant's attorney. Unless the court orders otherwise, the response must be filed at least 3 days before the scheduled conference or evidentiary hearing.

(m) Disclosure. In any proceeding under Rule 91 or Rules 91.1 through 91.7, each party must comply with Rule 49 within the time established by the court at the return hearing, resolution management conference, or evidentiary hearing or as agreed by the parties.

(n) – (p) No changes

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

(a) – (b) No changes

(c) Order to Appear. The order to appear must specify the date, time, and place of ~~the~~ a return hearing or evidentiary 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.

(d) Hearing. The court:

(1) at the return hearing, may inquire as to whether service has been effectuated, and, in the court's discretion, schedule an evidentiary hearing. The court may make any additional orders that the court finds appropriate to ensure a timely resolution of the petition.

(2) at the evidentiary hearing on the petition, ~~the court~~ must make an express finding whether the alleged contemnor had notice of the petition and order to appear. The court also must also determine whether the party who filed the petition has established that:

(i) the court entered a prior order;

(ii) the alleged contemnor had notice of the prior order; and

(iii) the alleged contemnor failed to comply with the order.

(e) – (g) No changes

DATED this 19th day of May, 2025.

/s/ Greg Sakall

Chair, Committee on Family Court