

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-23-0008
RULES 91(h) AND 92(c), RULES)
OF FAMILY LAW PROCEDURE)
) **FILED 8/28/2025**
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ORDER CIRCULATING ALTERNATIVE PROPOSAL FOR PUBLIC COMMENT

On January 4, 2023, Judge Bruce R. Cohen, Family Department Presiding Judge of the Superior Court in Maricopa County, filed a petition to amend Rules 91(h) and 92(c), Rules of Family Law Procedure ("RFLP"). The petition noted that the RFLP currently require that, upon a party's filing for certain post-decree proceedings, the Family Court must issue an Order to Appear that the petitioning party then has to serve on the responding party along with all of the other filed documents. This requirement had not worked as well as intended in some Arizona counties, resulting in undue use of judicial resources. Under Judge Cohen's proposed amendments, the Family Court in each county would have the option of issuing an Order to Appear either before or after service of process is effectuated.

In January 2023, Judge Cohen's petition was opened for comment. On March 2, 2023, the Family Court Improvement Committee ("FCIC") met to discuss it. After deliberations, the

FCIC unanimously voted to file a comment recommending further research and stakeholder discussion.

At its August 2023 Rules Agenda, this Court continued the matter to the August 2024 Rules Agenda. Additionally, it referred the matter to the Committee on Family Court ("COFC"), successor to the FCIC, for further research and stakeholder discussion.

At the Court's August 2024 Rules Agenda, the matter was again continued and referred to the COFC for report and recommendation.

On November 26, 2024, Judge Gregory Sakall, Chair of the COFC, filed a comment requesting that the Court continue this matter to its August 2025 Rules Agenda and allow the COFC to file a report and recommendation on the matter by no later than July 1, 2025.

The COFC then reviewed the petition and obtained stakeholder input. At its May 15, 2025 meeting, it voted unanimously to support an alternative proposal, which it now presents for this Court's consideration.

In drafting the alternative proposal, the COFC concluded that the better solution to the petition's concerns was to allow the Family Court to set a new type of hearing, to be denominated a "return hearing." At that hearing, the Family Court could inquire as to whether service has been effectuated, and in its

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 COFC concluded that Rule 76.2, RFLP, should also 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 a sanction if a party fails to do so.

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

The COFC did not, however, recommend immediate adoption of the alternative proposal. Instead, the COFC requested that the Court open a comment period to allow additional stakeholder and public input on the alternative proposal. The Court approves this course of action. Upon consideration,

IT IS ORDERED continuing this matter to the November 25, 2025 Rules Agenda;

IT IS FURTHER ORDERED that the COFC's alternative proposal, attached to this order, is opened for public comment under Rule 28(c), Rules of the Supreme Court of Arizona, with all comments

due no later than October 1, 2025, and any reply due no later than October 15, 2025.

The alternative proposal may be viewed by going to <http://www.azcourts.gov/Rules-Forum>. This opens the "Welcome" page. Petitions are posted under the appropriate body of rules, which is found by scrolling down the page.

For instructions on how to post comments electronically, click on <https://www.azcourts.gov/rules/Forum-FAQ> at the top of the Forum FAQ page and then on "How do I file a comment on a Rule 28 petition?"

Alternatively, commenters may submit comments by filing an original and one paper copy of the comment and one electronic copy of the written comment and supporting documents in Microsoft Word format on a CD or other compatible electronic medium with the Clerk of the Supreme Court, 1501 West Washington St., Room 402, Phoenix AZ 85007 in an envelope marked "Rule Comment."

Any person filing a comment must send a copy of the comment electronically or by ordinary mail to the COFC, in care of its Chair, Hon. Greg Sakall.

DATED this 26th day of August, 2025.

/s/
ANN A. SCOTT TIMMER
Chief Justice

TO:

Rule 28 Distribution

Susan Pickard

Hon Paul J McMurdie

Hon D Gregory Sakall

ATTACHMENT¹

RULES OF FAMILY LAW PROCEDURE

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 change]

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Rule 91. Modification or Enforcement of Judgment

(a) – (h) [No change]

(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]

¹ Additions to the text of the rule are shown by underscoring and deletions are shown by ~~strike through~~.

(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 change]

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

(a) – (b) [No change]

(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:

(A) the court entered a prior order;

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

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

(e) – (g) [No change]