

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 11/26/2025**
)
)
)

**ORDER AMENDING RULES 76.2, 91, AND 92,
RULES OF FAMILY LAW PROCEDURE**

On January 4, 2023, Judge Bruce Cohen as Family Department Presiding Judge, Superior Court, 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 require that, upon filing for certain post-decree proceedings, the court must issue an Order to Appear that the petitioner has to serve on the respondent along with all of the other filed documents.

However, in many cases in Maricopa County, the first scheduled hearing is vacated for various reasons, including service difficulties. Because this occurs immediately before or at the time of the hearing, the judicial time set aside for the hearing cannot be utilized for other matters. The benefit achieved by requiring an Order to Appear to be issued for a post-decree petitioning party results in an offsetting and undesirable expenditure of judicial resources.

Under Judge Cohen's proposal, the superior court in each county would have the option of issuing an Order to Appear or notice of hearing either before or after service of process is effected.

In March 2023, the Family Court Improvement Committee ("FCIC") met to discuss Judge Cohen's proposal. 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 consideration.

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 D. 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 began the process of reviewing the petition and obtaining stakeholder input. At its May 15, 2025 meeting, the COFC voted unanimously to support an Alternative Proposal ("AP"), which it filed as a comment on the Court Rules Forum.

The AP recommended that Rules 91 and 92 be amended to allow the Family Court to schedule a new type of proceeding, to be called an "initial conference." At that conference, the Family Court could inquire as to whether service has been effected, 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), RFLP, if appropriate.

The AP also recommended that Rule 76.2, RFLP, be amended to include the new initial conference to ensure that parties participate in the conference in good faith and allow the Family Court to impose a sanction if a party fails to do so.

During the August 2025 Rules Agenda, the Court continued this matter and circulated the AP for public comment. Only the State Bar filed a comment. It did not recommend adoption of the AP but instead recommended adoption of Judge Cohen's original petition.

The Court having considered both the AP and the State Bar's Comment,

IT IS ORDERED that Rules 76.1, 91 and 92, Rules of Family Law Procedure, are amended in accordance with the attachment to this order, effective January 1, 2026.

Paragraphs (j), (m), and (n) of Rule 91 include amendments to those provisions approved this date in a related matter, R-

24-0035, and are presented here because those amendments overlap amendments to Rule 91 adopted in connection with this petition.

DATED this 26th day of November, 2025.

/s/

ANN A. SCOTT TIMMER
Chief Justice

TO:

Rule 28 Distribution

Hon D Gregory Sakall

Hon Ronda Fisk

Theresa Barrett

Richard L Palmatier Jr

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 an initial conference, a ~~r~~Resolution ~~m~~Management conference, a scheduling conference, an evidentiary hearing, a trial, or other scheduled hearing;

(3) is substantially unprepared to participate in a an initial conference, resolution management conference, hearing, or trial;

(4) fails to participate in good faith in a an initial conference, resolution management conference, hearing or trial, or in preparing a resolution statement, scheduling statement, or pretrial statement.

(b)-(c) [No change]

* * *

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 an initial conference, resolution management conference, or evidentiary hearing, as appropriate. No evidence may be taken at an initial conference or resolution management conference except under emergency circumstances.

(2)-(3) [No change]

¹ Additions to the text of a rule are shown by underscoring and deletions are shown by ~~strikethrough~~.

(4) Scope of Initial Conference. At an initial conference, 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 an initial conference and if no initial conference is scheduled, no later than 20 days before the hearing for a petition under Rule 91.5, and in no event later than 40 days before the hearing for a petition under Rules 91.1 through 91.4 or 91.6 through 91.7.

(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 resolution management 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~~ disclose information in the party's possession and control, as well as information that the party can determine or acquire by reasonable inquiry and investigation.

(1) Timing of Initial Disclosure. Each party must serve an initial disclosure. The following deadlines for initial disclosures apply, unless otherwise ordered by the court or agreed upon in writing by the parties:

(A) For a petition under Rules 91.1 through 91.4 and 91.6 through 91.7, if the court sets an evidentiary hearing within 60 days of service of the petition, each party must serve its initial disclosure within the earlier of 30 days after service of the petition or 5 days before the evidentiary hearing.

(B) For a petition under Rules 91.1 through 91.4 and 91.6 through 91.7, if the court does not set an evidentiary hearing within 60 days of service of the petition, each party must serve its initial disclosure within 30 days after service of a petition.

(C) For a petition under Rule 91.5, each party must serve its initial disclosure within the earlier of 15 days after service of the petition or 5 days before the

evidentiary hearing. within the time established by the court at the conference or hearing or as agreed by the parties.

(2) Specific Disclosure Obligations. Each party must disclose the relevant documents and information provided in Rules 91.1 through 91.7, as applicable. In addition, for any petition under Rule 91 through 91.7, a party must disclose:

(A) Disclosure of Exhibits. Evidence, documents, or electronically stored information that the disclosing party plans to use at a hearing, including any material to be used for impeachment.

(B) Disclosure of Witnesses. The names, addresses, and telephone numbers of any witness whom the disclosing party expects to call at an evidentiary hearing, along with a statement fairly describing the substance of each witness's expected testimony.

(C) Disclosure of Expert Witnesses. The name, address and telephone number of any person the party expects to call as an expert witness at trial. The party also must disclose the subject matter on which the expert will testify, the substance of the facts and opinions on which the expert will testify, a summary of the grounds for each opinion, the expert's qualifications, and the name and address of any custodian of reports the expert prepared.

(D) Disclosure of Electronically Stored Information. Unless the parties agree or the court orders otherwise,

(i) Production of Electronically Stored Information. Within 20 days after serving its initial disclosure statement, a party must produce the electronically stored information identified under Rules 91 through 91.7. Absent good cause as found by the court, no party need produce the same electronically stored information in more than one form.

(ii) Presumptive Form of Production. A party must produce electronically stored information in the form requested by the receiving party. If the receiving party does not specify a form, the producing party may produce the electronically stored information in native form or in another reasonably usable form that will enable the receiving party to have the same ability as the producing party to access, search, and display the information including metadata.

(iii) Limits on Disclosure of Electronically Stored Information. Civil Rule 26(b)(2) applies to the disclosure of electronically stored information.

(iv) Resolution of Disputes. If the parties are unable to satisfactorily resolve any dispute regarding electronically stored information, the parties may present the dispute to the court in either a joint or individual motion. The motion must include the parties' positions and a good faith consultation certificate under

Rule 9(c). In resolving any dispute regarding electronically stored information, the court may shift costs, if appropriate.

(3) Proof of a Party's Income from All Sources. When Rules 91.1 through 91.7 require disclosure of proof of a party's income from all sources, disclosure must include the following documents and information:

(A) complete tax returns, W-2 forms, 1099 forms, and K-1 forms, for the past 3 completed calendar years, and year-end information for the most recent calendar year if tax returns are not yet due;

(B) information for the current calendar year for all income sources, including year-to-date pay stubs, salaries, wages, commissions, bonuses, self-employment income, dividends, severance pay, pensions, interest, trust income, income from businesses and properties, annuities, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, recurring gifts, prizes, and spousal maintenance;

(C) proof of court-ordered child support and spousal maintenance actually being paid by the party in any case other than the one in which disclosure is being provided;

(D) proof of all medical, dental, and vision insurance premiums paid by the party for any child listed or referenced in the petition;

(E) proof of any child care expenses paid by the party for any child listed or referenced in the petition;

(F) proof of any expenses paid by the party for private or special schools or other particular education needs of a child listed or referenced in the petition; and

(G) proof of any expenses paid by the party for the special needs of a gifted child or a child with a disability who is listed or referenced in the petition.

(4) Disclosure When Attorney's Fees are Requested. If an award of attorney's fees is requested, an Affidavit of Financial Information in compliance with Rule 91(g), and proof of a party's income from all sources.

(5) No Filing of Disclosures. The disclosures described in Rule 91 or Rules 91.1 through 91.7, must be served on all parties but may not be filed with the court.

(6) Continuing Duty to Disclose. The duty of disclosure prescribed in Rules 91 through 91.7 is a continuing duty, and each party must serve additional or amended disclosures when new or additional information is discovered or revealed. A party must serve such additional or amended disclosures in a timely manner, but in no event more than 30 days after the information is revealed to or discovered by the disclosing party. If the information is disclosed in a written discovery response or a deposition in a manner that reasonably informs all parties of the information, the information need not be presented in a supplemental disclosure statement.

(7) Deadline for Final Supplemental Disclosure. Each party must provide its final supplemental disclosure by the applicable deadline below, unless otherwise ordered by the court or agreed upon in writing by the parties:

(A) For a petition under Rules 91.1 through 91.4 and 91.6 through 91.7, if the court sets an evidentiary hearing within 60 days of service of the petition, each party must serve its final supplemental disclosure by no later than 5 days before the evidentiary hearing.

(B) For a petition under Rules 91.1 through 91.4 and 91.6 through 91.7, if the court does not set an evidentiary hearing within 60 days of service of the petition, each party must serve its final supplemental disclosure by no later than 30 days before the evidentiary hearing.

(C) For a petition under Rule 91.5, each party must serve its final supplemental disclosure by no later than 5 days of the evidentiary hearing.

A party seeking to use information, exhibit, witness, or expert witness that it first disclosed beyond the applicable deadline must obtain leave of court to extend the time for disclosure as provided in Rule 65(c).

(8) Failure to Disclose, False or Misleading Disclosure, Untimely Disclosure. A party prejudiced by a failure to disclose, false or misleading disclosure, or untimely disclosure, may seek the remedies identified in Rule 65.

~~(n) Attorney Fees, Costs, and Expenses.~~ In any post judgment proceeding in which an award of attorney fees, costs, and expenses is an issue, both parties must file and exchange a completed Affidavit of Financial Information at the time established by the court, but not later than in compliance with Rule 76.1(b) submittals. **Discovery.** Nothing in this rule precludes a party from conducting discovery under Rule 51.

(o)–(p) [No change]

* * *

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 an initial conference 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) Conference and Hearing. The court:

(1) at the initial conference, 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~~ 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 ~~1~~) the court entered a prior order;

(B ~~2~~) the alleged contemnor had notice of the prior order; and

(C ~~3~~) the alleged contemnor failed to comply with the order.

(e)–(g) [No change]