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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of	)	Arizona Supreme Court No. R-26-0016
	)	
PETITION TO AMEND RULES	)	
44.1 AND 44.2 OF THE ARIZONA	)	
RULES OF FAMILY LAW	)	COMMENT OF THE
PROCEDURE	)	COFC
	)	
_____	)	

The State Bar of Arizona (“State Bar”) filed the pending Petition seeking to amend Rules 44.1 and 44.2 of the Arizona Rules of Family Law Procedure (Ariz. R. Fam. L. P.), to allow for final decrees and judgments to be entered with very specific relief when the underlying petition only contained general language that “all community assets should be awarded equitably” and that “all community debt be assigned equitably.”

The Committee on Family Court (“COFC”) reviewed and discussed the Petition at its February 19, 2026 meeting. It voted unanimously, with one abstention, to oppose the Petition as drafted.

COFC’s primary concern is ensuring procedural due process to the Respondent who is in default. “The elements of procedural due process are

notice and an opportunity to be heard.” *Iphaar v. Industrial Comm’n*, 171 Ariz. 423, 426 (App.1992). In a default context, a “defendant who consciously allows a default judgment to be taken against him . . . [should be able to] rest secure in the knowledge that the judgment will not exceed the relief requested in the [petition].” *Darnell v. Denton*, 137 Ariz. 204, 206 (App. 1983) (discussing Ariz. R. Civ. P. 54(d)).

COFC agrees with the State Bar that family law petitions often contain very broad requests for relief and do not drill down into specific allocation of specific assets and debts. When confronted with requests for a default decree or judgment on such petitions, the current rules provide for the family court to hold a hearing. Ariz. R. Fam. L. P. 44.1(a)(1) (providing generally that a court cannot grant a default judgment without a hearing where the proposed judgment is different from the petition or for amounts greater than what was requested in the petition); Ariz. R. Fam. L. P. 44.2(a) (providing that a party who cannot meet Rule 44.1’s requirements must have a hearing). If a Petitioner does not want to have a hearing, the petitioner has options. The petitioner may either seek a judgment consistent with the petition or may file and serve an amended petition under Ariz. R. Fam. L. P. 28 and 41.

Rather than continue the current practices which allow for reasonable alternatives for the Petitioner as well as safeguards to ensure that any

decree/judgment is fair and equitable, the State Bar proposes that a petitioner could materially change the relief requested in the petition by merely attaching the proposed default judgment or decree to the Application for Default and sending the same to the respondent. In the proposed rule, the State Bar provides for no limitation on the changes a petitioner could make. A petitioner could originally allege that neither party is entitled to spousal maintenance or child support and then change it to include a request for significant maintenance and support. A petitioner could include an unequitable division of property and debt, while the petition had set forth an equitable division.

Also of concern, the proposed rule change only requires that the proposed decree be “sent.” That term is ambiguous as to the means of transmission and not consistent with the mailing requirements of Ariz. R. Fam. L. P. 44(a)(3).

While the State Bar argues that due process is satisfied by merely attaching the proposed decree to the Application for Default, COFC respectfully disagrees. Rules 28 and 41 serve important functions as they ensure that a petition gives the respondent notice of the relief requested, set forth procedures on how to amend a petition, and ensure that, in almost all instances, the respondent has actual notice of what the petition (or amended petition) requests. *See, e.g., Scott v. G.A.C. Finance Corp.*, 107 Ariz. 304, 305

(1971) (recognizing the purpose of service is to give the other party actual notice of the proceedings). While Rule 41(d) provides for mailing to a respondent, it still requires that there be a receipt signed by the respondent. Ariz. R. Fam. L. P. 41(d)(1). Importantly, Rule 44 regarding applications for default merely requires a mailing and not the signed receipt. Ariz. R. Fam. L. P. 44(a)(3)(A).

For the foregoing reasons, COFC respectfully requests that the Court deny the Petition. There are not sufficient safeguards in the State Bar's proposed rule to ensure that the respondent has actual notice of any proposed material changes to the petitioner's requested relief.

DATED this 1st day of May, 2026.

/s/ Greg Sakall

Chair, Committee on Family Court