

Committee has identified a significant number of minor changes that involve incorrect statutory or rule references, redundant wording, confusing wording, misspelled words, grammatical and punctuation errors, inconsistent wording, omitted words, and similar mistakes and omissions that are not generally substantive. The need for amendments to correct these errors is largely self-evident. These changes are all referenced in the edited version of the rules in Appendix A, but are not further discussed in this Petition. The Committee in its initial review of the *Arizona Rules of Family Law Procedure* has also identified a number of amendments that would make minor substantive changes in family court procedures, or that are needed to clarify ambiguous or inconsistent provisions. With respect to this latter category of amendments, the Committee provides the following detailed explanation of the specific changes in those rules that may modify or clarify existing substantive processes:

I. GENERAL ADMINISTRATION

Applicability of Rules of Evidence. Rule 2(B)(2) is amended to clarify that this rule only eases the admissibility of evidence under Rules 403, 602, 801-806, 901-903 and 1002-1005, *Arizona Rules of Evidence*, when a notice of strict compliance with the rules of evidence is not filed in a case. Without amendment it could appear that the original rule abrogates other rules of the *Arizona Rules of Evidence*, including those that are more procedural in nature. For example, there

was no intention to remove requirements and procedures outlined in Rules 501 (privileges), 603 (oath), 604 (interpreters), 607 (impeachment), 610 (religious beliefs), 611 (mode of interrogation), 613 (prior statements), 614 (interrogation by the court), 615 (exclusion of witnesses) and 1006 (summaries). Such a result was not intended in the original rule and the changes to Rule 2(B)((2) will avoid confusion and debate on what portions of the *Arizona Rules of Evidence* continue to apply in family law cases.

Additional Time after Service By Mail/Facsimile. Rule 4(D) is amended to add the words “or by facsimile” to clarify that the additional five calendar days allowed to respond when a notice or paper is served by mail applies equally to service by facsimile.

Representation of Children. Rule 10(A)(2) adds the term “court-appointed advisor” to make clear that the court has authority to appoint a court-appointed advisor as described in the rule, in addition to a best interests attorney and a child’s attorney.

Child Representative Fees. Rule 10(F) would allow the court to allocate fees and expenses of a child’s representative “as the court deems appropriate” to replace the prior standard of “in accordance with applicable Arizona law and rules.” The change is necessary because there is no “law or rule” that clearly applies in this area.

Conduct of Proceedings. Rule 22 is a new rule (reserved in original) that allows the court to “impose reasonable time limits on all proceedings or portions thereof.” Rule 77 already allows the court to impose reasonable time limits on trials, but the Committee determined that it would be inconsistent to not have a similar requirement for evidentiary hearings, oral arguments, conferences and other non-trial proceedings. This rule also requires all proceedings to be “conducted in an orderly, courteous, and dignified manner,” and that all arguments and remarks “shall be addressed to the court.” These later provisions are merely designed to increase the level of civility and professionalism in the courtroom.

II. PLEADINGS AND MOTIONS

Service of Summons and Petition. Rule 27(B) is amended to delete the words “non[parent] or grandparent or great-grandparent visitation” to clarify that actions for custody filed by non-parents and actions for visitation by grandparents or great-grandparents will proceed with an *Order to Appear* process rather than a *Summons*. There is no clear direction in statute that a *Summons* is required to be issued in these cases, but A.R.S. §§25-409(E) and -415(F) require that these actions must be filed in the underlying dissolution or paternity action involving the parents. Since these actions should seldom be the originating action, an *Order to Appear* process is less confusing and allows the court an opportunity for personal interaction before entering an order in these cases.

Order to Appear and Petition. Rule 27(C) is added to clarify that all family law actions that do not require a *Summons*, as specifically outlined in Rules 27(A) and (B), will proceed by an *Order to Appear* issued by the court.

Counterclaims; Third Party Practice. Rule 33(H) is added to specify what rules apply in the event the court consolidates a civil cause of action into a family law case that entitles a party to a jury trial as a matter of right. The *Arizona Rules of Family Law Procedure* obviously has no rules governing jury trials because all issues are tried to the court. This rule provides that in such consolidated cases, the *Arizona Rules of Civil Procedure* will govern all further proceedings in the consolidated case until a judgment has been entered on the jury issues. Thereafter, the *Arizona Rules of Family Law Procedure* will apply.

III. PARTIES

(No Changes)

IV. SERVICE OF PROCESS

Service After Appearance. Rule 43(C) is amended to allow “facsimile” service upon an attorney or upon a party after the initial personal service upon a party “if a facsimile number is listed on a pleading or the parties agree in writing that fax is an acceptable service method.” Service by facsimile “is complete upon transmission,” subject to the additional five (5) calendar days allowed to respond to the service when a notice or paper is served by facsimile pursuant to Rule 4(D), as amended.

Public Access. Rule 43(D)(5), upon administrative order of the presiding judge or local rule, now makes all initial family law filings, including Petitions for Orders of Protection and Petitions for Injunctions Against Harassment, unavailable to the general public until “the affidavit of service thereof is filed, or forty-five (45) days have passed since the filing of the petition with the court, whichever occurs first.” It has proven difficult to establish accurate systems to distinguish between the two events, and it does not now appear that any counties have opted to utilize this rule. To improve its utility, Rule 43(D)(5) is amended to allow uniform access to all such documents to the general public forty-five (45) days after filing by deleting the phrase “the affidavit of service thereof is filed, or”.

Sensitive Data. Rule 43(G)(1) is amended to clarify that sensitive data contained on a confidential sensitive data sheet filed with the court is “available to the parties, the parties’ attorneys, court personnel and any other person or agency authorized by court order.” The original rule does not now provide the Clerks of Court adequate direction on disclosure of the confidential information.

V. DEFAULT DECREE, CONSENT DECREE, AND DISMISSAL

(No Changes)

VI. TEMPORARY ORDERS

Motions for Post-Decree or Post-Judgment Temporary Custody Orders.

Rule 47(B) and (D) are amended to remove the requirement that a hearing or

conference must be scheduled by the court within thirty (30) days of the court receiving a request for temporary orders in a post-decree and post-judgment petition. The thirty (30)-day requirement would remain for pre-decree cases. This requirement in post-decree and post-judgment matters, however, is inconsistent with the procedure outlined in Rule 91(D), and would require the court consider issuing temporary custody and support orders prior to the time that a court can determine whether adequate cause has been pled under A.R.S. §25-411 to justify the court scheduling any hearing to consider a modification of custody. The strict requirement is replaced with a requirement that the court schedule a hearing or conference “at an appropriate time determined by the court.”

Requirements Prior To Conference or Hearing. Rule 47(G) now requires that the parties meet and confer prior to a scheduled conference with the court. This rule is amended to make it consistent with Rule 76(A), and replace the absolute requirement to meet and confer if there is a significant history of domestic violence between the parties and adds a requirement for the parties and counsel to “take all steps reasonable under the circumstances to resolve as many issues as possible.”

Temporary Orders Without Notice. Rule 48(A) is amended to clarify that a motion seeking temporary orders without notice can only be “filed after or concurrently with an initial pre-decree, post-decree or post-judgment petition.”

Some confusion has arisen on this issue, and the Committee agrees that there is a significant potential for abuse and waste of judicial resources if the court proceeds on a request for a temporary order without notice that must expire in ten (10) days if there is no pending underlying petition to determine the issues on a more permanent basis.

VII. DISCLOSURE AND DISCOVERY

Resolution Statement. Rules 49(A),(B), and (C) are amended to clarify that disclosure of a Resolution Statement means that it will be filed with the court consistent with Rule 76(A)(2)(c). The filing of one Statement, with a copy provided to all adverse parties, meets both requirements. The amendments also provide that documents required to be disclosed with the Resolution Statement are not filed but are to be served with the Resolution Statement.

Property Disclosure. Rule 49(D)(6) is amended to clarify that the business records provided in the rule are to be disclosed “for the period commencing twenty-four (24) months prior to the filing of the petition”.

Document Organization. Rule 62(C) is added to require that the production of documents be “as they are kept in the usual course of business or shall organize and label them to correspond with the categories of the request.” The Committee agrees that this requirement will foster better cooperation between parties and reduce the time and expense required to inspect unfamiliar documents.

VIII. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION (ADR)

Petitions for Conciliation. Rule 68(A) now requires Petitions for Conciliation to be filed with the Clerk of the Court. This rule is amended to allow the option of filing these Petitions “directly with conciliation court as provided by local rule or administrative order.” This conforms to prior practice in many counties, often allows for earlier intervention with the couple, and can result in less confusion in the process.

IX. PRETRIAL AND TRIAL PROCEDURES

Pretrial Statements. Rule 76(C)(2) is amended to allow some local flexibility in the exact format required for the comprehensive statement of income and expenses if it is “substantially similar” to the form approved by the Supreme Court. This rule also adds the requirement that a Parent’s Worksheet for Child Support Amount be filed with the pretrial statement if custody, parenting time or child support issues are involved.

X. JUDGMENTS AND DECREES

Motions for Summary Judgment. Rule 79(C) is amended to require that “Unless otherwise ordered by the court, all motions for summary judgment shall be filed not later than sixty (60) days prior to trial.” The Committee agreed that this requirement was necessary to avoid undue continuances of trial dates caused by belatedly filed motions for summary judgment.

Motions to Alter or Amend a Judgment. Rule 84 is amended to require that any motion to alter or amend a ruling of the court “shall be filed not later than 15 days after entry of the judgment.” The Committee agreed that this time limit was needed to bring finality to family law cases and require any requests to alter or amend a ruling be promptly addressed to the court.

XI. POST-DECREE/POST-JUDGMENT PROCEEDINGS

Post-Decree General Provisions. Rule 91(A)(4) is added to require that parties filing post-decree and post-judgment petitions, except petitions to modify child custody that do not proceed by an *Order to Appear* process, submit three (3) copies of the filed petition and the original and three (3) copies of an *Order to Appear* to the assigned judicial officer. This change conforms with existing practice in most counties and is especially important to insure self-represented litigants have sufficient documents to provide to the division and serve the other party.

Post-Decree General Provisions. Rule 91(A)(5) is amended to allow some local flexibility in the exact format required for the comprehensive statement of income and expenses if it is “substantially similar” to the form approved by the Supreme Court.

Petition for Modification of Spousal Maintenance or Child Support. Rule 91(B)(1) and (2) are amended to avoid any confusion and clarify that

petitions to modify spousal maintenance or child support must be served within the time provided in Rule 91(L).

Petition to Modify Child Custody. Rule 91(D)(4) now requires a respondent in a post-decree matter to file a response within twenty (20) days from the date of service regardless of whether they were served in Arizona or outside of Arizona, and is inconsistent with Rule 42(J). Rule 91(D)(4) is amended to make this rule consistent with Rule 42(J) by allowing all responding parties served with process outside of Arizona to file a response within thirty (30) days of service. The amendment also changes the mandatory requirement that a response “shall” be filed to provide that a respondent “may” file a response if they wish.

Petition to Modify Child Custody—Default. Rule 91(D)(6) is amended to clarify the confusion existing under the current rule that occurs when a respondent fails to file a response to a petition to modify child custody. The amendment by adding the introductory phrase, “Whether or not a response is filed,” is intended to clarify that the failure to respond allows the court to determine under A.R.S. §25-411 whether adequate cause exists to schedule further hearing, but does not result in an automatic default of the respondent leading to a change in custody as requested in the petition without further hearing.

Petition to Modify Child Custody File With Other Post-Decree Petitions. Rule 91(D)(7) is added to clarify the ambiguity that now exists when a

party files a petition to modify child custody and that same party or the opposing party files another post-decree petition seeking to modify or enforce other provisions of the Decree, Judgment or prior Order. This amendment makes clear that all petitions will be processed under the child custody modification procedures outlined in Rule 91(D) to avoid multiple or duplicative hearings and redundant processes.

XVI. FAMILY LAW FORMS

References to Forms. Throughout the rules, references to the forms have been made consistent. Generally, the proposed changes to the rules provide for the use of a particular form or something "substantially similar" thereto. The proposed changes to Rule 97 explain the use of the phrase "substantially similar," as used in these rules. Any changes to the forms would have to be made by an Administrative Directive of the Supreme Court.

Technical and Non-substantive Changes to Forms. The changes to the forms themselves are considered technical and non-substantive. Changes made to the forms were designed to (1) correct spelling and grammar errors, (2) streamline the forms, (3) make the forms consistent with the rules, and (4) make the forms internally consistent.

CONCLUSION

The Committee respectfully requests the Court to adopt the amendments set forth in the revised and edited version of the *Arizona Rules of Family Law Procedure* set forth in Appendix A, and that these changes be expedited with an effective day of January 1, 2007, all in accordance with the form of order set forth in accompanying Appendix B, or such other order that the Court deems appropriate. This request is an interim request designed to address the technical errors and minor substantive changes in the *Arizona Rules of Family Law Procedure* that the Committee determined were inaccurate, misleading, incomplete, unworkable or confusing. The Committee has identified a number of more substantive rule changes that require further comment and debate by the Committee and the public. The Committee will address these in future sessions before its charge expires and submit a final petition if further changes are indicated.

Respectfully submitted this _____ day of October, 2006.

Norman J. Davis
Family Court Presiding Judge
Maricopa County Superior Court

Original and 6 copies filed with
The Clerk of the Arizona Supreme Court.

Copy mailed or hand-delivered this _____ day
of October, 2006, to:

Chief Justice Ruth V. McGregor
Vice Chief Justice Rebecca White Berch
Justice Michael D. Ryan
Justice Andrew D. Hurwitz
Justice W. Scott Bales
David K. Byers, Administrative Director
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