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8 **IN THE SUPREME COURT**
9 **STATE OF ARIZONA**

10 PETITION TO AMEND RULES 35(D),
11 82(B), 83, AND 84, ARIZONA RULES
12 OF FAMILY LAW PROCEDURE

Supreme Court No.

**Petition to Amend Rules 35(D), 82(B),
83, and 84, Arizona Rules of Family
Law Procedure**

13 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar
14 of Arizona hereby petitions this Court to amend Rules 35(D), 82(B), 83, and 84 of
15 the Arizona Rules of Family Law Procedure.

16 All of the foregoing rules address challenges to Family Law Court decisions.
17 Rule 35(D) addresses motions for reconsideration of such decisions; Rule 82(B)
18 addresses challenges to findings of fact by the Family Law Court; Rule 83 addresses
19 motions for new trials; and Rule 84 addresses motions to alter or amend decisions by
20 the Family law Court. All of these Rules as written are overlapping in their scope, a
21 fact that has led to confusion and a certain degree of redundancy in their application.
22 The resulting procedural confusion can have profound implications, particularly for
23 the *pro se* litigant, since failure to invoke the proper procedural rule can lead to an
24 inadvertent waiver of the right to appeal. This has often resulted in the practice of
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1 unnecessarily pleading a combination of the foregoing rules as a basis for challenging
3 a Family Law Court decision, despite the different procedural (and sometimes
4 conflicting) requirements for each Rule. The current Rules of Family Law Procedure
5 also do not specifically address the method by which parties are to seek clarification
6 of particular rulings from the Family Law Court. The proposed changes to the above-
7 referenced Rules are intended to simplify and clarify the procedure with respect to
8 motions challenging Family Law Court rulings and to make the Rules more
9 consistent with existing practice in the Family Law Courts. In general, the proposed
10 changes to the Rules would:

11 1. Essentially delete Rule 35(D), referring parties who are interested in
12 filing a motion for reconsideration (or clarification) to revised Rule 84.

13 2. Completely rewrite Rule 84 to exclusively address motions for
14 reconsideration and/or clarification and make clear that motions under revised Rule
15 84 do not extend the time for filing an appeal from the court ruling at issue, (which is
16 the current rule). The language of the current Rule 84 regarding alterations or
17 amendments to court rulings would be consolidated with revised Rule 83.

18 3. Consolidate current Rules 83 (motions for new trial) and 84 (motions to
19 alter or amend) into one Rule governing both types of motions. As a practical matter,
20 the general practice in the Family Law Court is to consolidate these two types of
21 motions into a single motion. Motions filed under revised Rule 83 would extend the
22 time for filing an appeal, which is consistent with the current practice for both Rule
23 83 and 84 in their present form.

24 4. Revise Rule 82(B) (amendments to findings of fact) to bring it into
25 compliance with the revisions made to Rules 83 and 84.

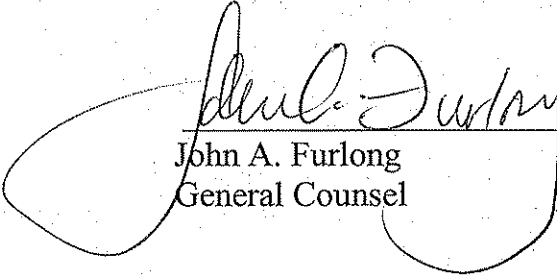
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Consolidating the rules governing challenges to Family Law Court decisions into a specific section of the Family Law Rules and reducing the overlapping scope of the existing Rules would reduce the confusion and redundant pleading that often plagues motion practice in this particular area and would help avoid the pitfall of inadvertent waivers of parties' right to appeal.

The specific proposed revisions to each of the foregoing Rules are attached hereto.

IN CONCLUSION, the State Bar of Arizona respectfully requests amendment of Ariz. R. Fam. L. P. 35(D), 82(B), 83 and 84 as set forth in the attached drafts.

RESPECTFULLY SUBMITTED this 13th day of December, 2013.



John A. Furlong
General Counsel

Electronic copy filed with the Clerk of the Supreme Court of Arizona this 13th day of December, 2013.

By: Kathleen A. Lundgren

Rule 35. Family Law Motion Practice

D. Motions for Reconsideration. ~~A party seeking reconsideration of a ruling of the court may file a motion for reconsideration. All motions for reconsideration, however titled, shall be submitted without oral argument and without response or reply unless the court otherwise directs. No motion for reconsideration shall be granted, however, without the court providing an opportunity for response. A motion authorized by this rule may not be employed as a substitute for a motion pursuant to Rule 82(B), 83 or 85(C) and shall not operate to extend the time within which a notice of appeal must be filed. A motion for reconsideration shall be filed not later than thirty (30) days after the date of filing of the ruling sought to be reconsidered. All motions to reconsider any ruling shall comply with Rule 84.~~

Rule 82. Findings by the Court; Judgment on Partial Findings

B. Amendment Sufficiency of Evidence. ~~Upon motion of a party made not later than fifteen (15) days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 83.~~ When findings of fact are made, the question of the sufficiency of the evidence to support the findings may thereafter be raised in a Rule 83 motion for new trial or amended judgment, whether or not the party raising the question has objected to those findings made in the superior court ~~an objection to such findings~~ or has made a motion to amend them or a motion for judgment.

Rule 83. Motion for New Trial or Amended Judgment

A. Grounds. A ruling, decision or judgment may be altered or amended, or vacated and a new trial granted, on motion of the aggrieved party for any of the following causes materially affecting that party's rights:

* * *

B. Scope. A decision or judgment may be altered or amended, or A new trial may be granted to all or any of the parties and on all or part of the issues for any reasons for which new trials are authorized by law or rule of court. On a motion for new trial, the court may open the judgment, if one has been entered, take additional testimony, amend or alter findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

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COMMITTEE COMMENT

These revisions merge former Rule 84 (Motion to Alter or Amend a Judgment or Order) into Rule 83 to simplify the Rules of Family Law Procedure governing challenges to court rulings.

Rule 84. Motion for Reconsideration or Clarification to Alter or Amend a Judgment or Order

~~A party seeking alteration or amendment of a judgment or order of the court may file a motion for alteration or amendment of a judgment or order. All such motions shall be filed not later than 15 days after entry of the judgment or order. A motion authorized by this rule may not be employed as a substitute for a motion pursuant to Rule 82(B), 83 or 85(C). Responsive judgment or order, except as otherwise ordered by the court.~~

A. Grounds. Any party may file a motion to reconsider or clarify the court's ruling for the following reasons:

1. The court did not properly consider or weigh all of the admitted evidence;
2. The court did not properly consider, interpret or apply the controlling law;
3. The Court mistakenly overlooked or misapplied uncontested facts, including mathematical errors, that were necessary to the ruling; or
4. The ruling is confusing or susceptible to more than one reasonable interpretation.

B. Scope. All motions for reconsideration or clarification, however titled, shall specify one or more of the grounds enumerated in paragraph A above as the basis for the motion. All such motions shall be submitted without oral argument and without response or reply unless the court otherwise directs. No such motion shall be granted, however, without the court providing an opportunity for written response. A motion authorized by this rule may not be substituted for, combined with, or pled alternatively to, a motion filed under Rule 83. On a motion for reconsideration or clarification, the court may, after allowing an opportunity for written response, modify its ruling as appropriate. The court may not, however, open the judgment or accept additional testimony or evidence as it could with a motion filed under Rule 83.

C. Partial Rulings; Oral Argument. The court may summarily deny a motion for reconsideration or clarification with regard to one or more challenged rulings, while ordering a written response concerning others. The court may also schedule oral argument on any aspect of the motion if it believes oral argument could prove helpful.

D. Timing of Motion. A motion offered under enumerated grounds (1), (2) or (3) of paragraph A of this rule shall be filed no later than 30 days after entry of

the relevant ruling. Motions offered under enumerated ground (4) of paragraph A of this rule may be made at any time deemed appropriate by a party or the court.

E. Effect of Motion on Time for Appeal. No motion authorized by this rule shall suspend or extend the deadline for filing a notice of appeal from the original judgment.

COMMITTEE COMMENT.

This Rule replaces former Rule 35(D), and better suits the existing practice in family court concerning the motions for reconsideration and clarification. It is intended to offer litigants and judges alike a less formal and more economical method for addressing perceived errors in court rulings than a motion for new trial — especially when the errors are not deemed sufficiently material to implicate a direct appeal. While this Rule and Rule 83 unavoidably overlap, a motion for reconsideration or clarification is a more limited method for challenging a court ruling. It should not be used in tandem with, or as a substitute for, motions under Rule 83. Parties who do contemplate an appeal should always proceed under Rule 83.