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

10 PETITION TO AMEND RULE 47,  
11 ARIZONA RULES OF FAMILY LAW  
12 PROCEDURE

Supreme Court No. R-

**Petition to Amend Rule 47, 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 Rule 47, Arizona Rules of Family  
15 Law Procedure.

16 Family Law Rule 47 governs the procedure for temporary orders. The passage  
17 of 2012 Senate Bill 1127 and 2013 Senate Bill 1073 into law requires two changes to  
18 Rule 47 (see attached).

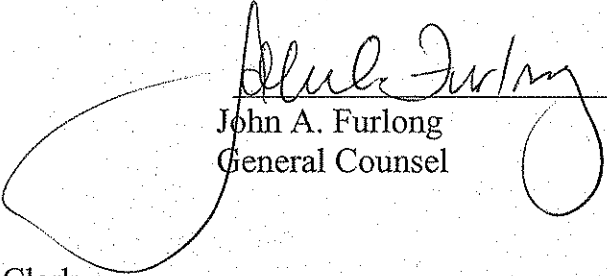
19 First, 'legal decision-making' has been substituted for 'custody' to conform  
20 with new definitions at ARIZ. REV. STAT. § 25-401, as Senate Bill 1127 abolished use  
21 of the latter term in Title 25, Chapter 4, Article 1 of the Arizona Revised Statutes.

22 Second, Senate Bill 1073 now requires family courts to conduct a hearing to  
23 resolve temporary orders for legal decision-making or parenting time within 60 days  
24 of a motion to that effect. *See* ARIZ. REV. STAT. § 25-407(A). This new legislation  
25 arguably intrudes upon the Supreme Court's plenary power over procedural rules,  
and may not truly address any substantive issue. *Compare Seisinger v. Siebel*, 220  
Ariz. 85, 203 P.3d 483 (2009) (legislative requirement of expert testimony in medical

1 malpractice action is substantive component of common law, and does not violate  
2 separation of powers). The proposed amendment will incorporate the text of Senate  
3 Bill 1073 into Rule 47 and eliminate any perceived inconsistency between the two.

4 IN CONCLUSION, the State Bar of Arizona respectfully requests amendment  
5 of ARIZ. R. FAM. L. P. 47 as set forth above.

6 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of December,  
7 2013.

8  
9   
10 John A. Furlong  
11 General Counsel

12 Electronic copy filed with the Clerk  
13 of the Supreme Court of Arizona this  
14 13<sup>th</sup> day of December, 2013.

15 By: Kathleen A. Lundgren  
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ATTACHMENT

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1           **Rule 47. Temporary Orders**

2           **A. Motions for Pre-Decree or Pre-Judgment Temporary Orders.** A party  
3 seeking temporary orders under A.R.S. §§ 25-315, 25-324, 25-404, 25-408,  
4 25-415, 25-817 or 25-905 shall do so by filing a separate verified motion with  
5 the court setting forth the legal and jurisdictional basis for the motion and the  
6 specific relief requested. The motion shall be filed after or concurrently with  
7 the initial petition, shall incorporate the relevant allegations of a filed petition  
8 by reference and not separately repeat them, and shall include the following  
9 information and documents, where relevant:  
10

11           1. *Custody Legal Decision-Making and Parenting Time*. If a party seeks a  
12 temporary eustody legal decision-making, parenting time, or visitation order,  
13 the motion shall set forth a proposed parenting plan specifically stating the  
14 eustody legal decision-making, parenting time, and visitation requested for all  
15 parties to the action.  
16

17           2. through 4. [No change in text.]  
18

19           **B. Motions for Post-Decree or Post-Judgment Temporary Custody Legal**  
20 **Decision-Making Orders.** A party seeking a temporary eustody legal  
21 decision-making, parenting time, or visitation order following a previous  
22 eustody determination, shall do so by filing a separate verified motion setting  
23 forth the legal and jurisdictional basis for the motion and the specific relief  
24 requested. The motion shall be filed after or concurrently with a post-decree or  
25 post-judgment petition authorized by statute, shall incorporate the relevant

1 allegations of the pending post-decree or post-judgment petition by reference  
2 and not separately repeat them, and shall set forth the relief requested,  
3 including a proposed parenting plan stating the eustody legal decision-making  
4 and parenting time requested for all parties to the action. Upon receiving a  
5 post-decree or post-judgment motion for temporary eustody legal decision-  
6 making, parenting time, or visitation orders, the court shall schedule a post-  
7 decree or post-judgment management conference, or an evidentiary hearing at  
8 an appropriate time determined by the court.

9  
10 **C. [No change in text.]**

11  
12 **D. Hearing.**

13  
14 1. Generally. Upon receiving a Motion for Temporary Orders and  
15 documents required by paragraph C in a pre-decree matter, the court shall  
16 schedule a pretrial conference, a Resolution Management Conference  
17 pursuant to Rule 76(A), or an evidentiary hearing, which shall be set not  
18 later than thirty (30) days after receiving the motion. In the event the court  
19 holds a pretrial conference or Resolution Management Conference at  
20 which all issues are not resolved, the court shall then set an evidentiary  
21 hearing not later than thirty (30) days thereafter to resolve the remaining  
22 issues, unless the parties agree to a different timeframe or procedure. The  
23 court shall not resolve disputed issues of fact at a pretrial conference or  
24 Resolution Management Conference absent agreement of the parties. The  
25 court for good cause shown may extend the timeframes set forth in this  
paragraph.

23 2. Pre-Decree Legal Decision-Making and Parenting Time Actions.  
24 Notwithstanding the provisions of paragraph (D)(1), if a party to a legal  
25 decision-making or parenting time action files a motion for temporary  
orders in any pre-decree matter, the court shall hold an evidentiary hearing  
within sixty days after the party files the motion unless:

1 a. The filing party waives the requirement for a hearing to be  
2 conducted within sixty days after the party files the motion.

3 b. Temporary orders are established through a separate conference  
4 or hearing within sixty days after the party files the motion.

5 c. Extraordinary circumstances exist and the court is not able to  
6 schedule the hearing. If the court is not able to schedule the hearing  
7 within sixty days after the motion is filed, it must make a written  
8 finding on the record as to the cause of the delay.

9 Nothing in this paragraph precludes the court from setting any other  
10 conference or hearing deemed appropriate.

11 **E. through N. [No change in text.]**

12  
13 **Comment to 2015 Amendment**

14  
15 Rule 47(D)(2) has been added to conform to legislative changes made to  
16 A.R.S. § 25-407 in Senate Bill 1073, which was passed in the First Regular  
17 Session of the Fifty-first Legislature with an effective date of September 13,  
18 2013 (Laws 2013, Chapter 31).

19  
20 **COMMITTEE COMMENT**

21  
22 **[No change in text.]**