

David K. Byers, Administrative Director  
Administrative Office of the Courts  
1501 W. Washington St., Ste. 411  
Phoenix, AZ 85007  
(602) 452-3301  
Projects2@courts.az.gov

IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:

PETITION TO AMEND	)	
RULE 40 OF THE	)	
ARIZONA RULES OF	)	Supreme Court No. R14-_____
FAMILY LAW PROCEDURE	)	(expedited consideration requested)
_____	)	

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to adopt the attached proposed amendment to Rule 40 of the Rules of Family Law Procedure (RFLP), in response to recent amendments to paternity statutes enacted through Senate Bill 1061 (Laws 2014, Chapter 230). The text of the proposed amendments is set out in the accompanying Appendix A.

**I. Background and Purpose of the Proposed Rule Amendment.** Senate Bill 1061 was passed and signed into law in the Second Regular Session of the Fifty-first Legislature (Ch. 230)(2014). The bill’s effective date is July 24, 2014.

SB 1061 corrected an inconsistency between certain provisions in Title 8 and Title 25 regarding the time a potential father in an adoption proceeding has to file a paternity action, which is a pre-requisite to preserving his rights to consent to the adoption and to receive notice of any judicial hearing regarding the child's adoption and termination of his parental rights.

Currently, A.R.S. § 8-106(G)(3) requires a potential father to initiate paternity proceedings and serve the mother within 30 days of receipt of notice of the planned adoption. However, A.R.S. § 25-806(c) states that "the procedure on the filing of the [paternity] petition shall be as in other civil cases;" Arizona Rules of Civil Procedure 4(i) allows 120 days for the service of a complaint in a civil action. Paternity cases are governed by the Rules of Family Law Procedure, *see* RFLP Rule 1. Family Law Rule 40(I) allows 120 days to serve a paternity action.

SB 1061 eliminated the inconsistency between Title 8 and Title 25 by cross-referencing the statutes and clearly establishing a 30-day period for the potential father to file and serve a paternity action on mother once he is notified of the planned adoption, instead of the 120 days allowed in civil actions. The bill also authorized an attorney or agency that is licensed in Arizona and that is representing the mother in the adoption proceeding to accept service of a petition to establish paternity related to the adoption proceeding. The proposed amendment addresses both of these statutory changes.

**II. Pre-Petition Comments.** Due to the need to have the amendment in place for the July 24, 2014 effective date of SB 1061, petitioner has not circulated his proposal for pre-petition comments.

**III. Effective Date of the Proposed Rule Amendment.** Petitioner respectfully requests that the Court consider this petition on an expedited basis, adopt the proposed rule amendment with a July 24, 2014 effective date, and establish a comment period to follow, as permitted by Supreme Court Rule 28(G).

RESPECTFULLY SUBMITTED this \_\_\_\_ day of \_\_\_\_\_, 2014.

By/s/ \_\_\_\_\_  
David K. Byers, Administrative Director  
Administrative Office of the Courts  
1501 W. Washington St., Ste. 411  
Phoenix, AZ 85007  
(602) 452-3301  
Projects2@courts.az.gov

## Proposed Rule Change

(Proposed new language is shown with underscoring)

### APPENDIX A

#### Arizona Rules of Family Law Procedure

##### Rule 40. Process

A. – H. [No changes]

**I. Summons; Time Limit for Service.** If service of the summons and petition is not made upon a respondent within one hundred twenty (120) days after the filing of the petition, the court, upon motion or on its own initiative after notice to the petitioner, shall dismiss the action without prejudice as to that respondent or direct that service be effected within a specified time; provided that if the petitioner shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to Rules 42(F), (G), (H), and (I), or to service of a paternity action described in subdivision (J) of this Rule.

**J. Time Limit for Service; Paternity Actions Involving Adoption.** A potential father who has been served with notice of a planned adoption pursuant to A.R.S. § 8-106(G), must file and serve on the mother, her attorney, or the agency that is representing the mother, a copy of the verified petition to establish paternity and summons within thirty (30) days of completion of service of the notice of the planned adoption. The court shall dismiss any proceeding that is barred pursuant to A.R.S. § 8-106(J).