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

10 In the Matter of:

11 **PETITION TO AMEND RULE 78,**
12 **ARIZONA RULES OF FAMILY**
13 **LAW PROCEDURE**

Supreme Court No. R-
PETITION

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16 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar
17 of Arizona hereby petitions this Court to amend Rule 78 of the Arizona Rules of
18 Family Law Procedure. The purpose of the amendment is to conform the Family
19 Law Rule to the corresponding Rule of Civil Procedure regarding time to request
20 attorney's fees after a ruling on the other pending issues.

21
22 **INTRODUCTION**

23 Under the current version of ARFLP 78, there is no time limit to request
24 attorney's fees after resolution of the other pending issues. This creates an issue
25

1 when a party requests attorney's fees in a pleading prior to trial, but the Court does
2 not rule on the issue. ARFLP 78(D) states:

3
4 **D. Attorneys' Fees, Costs, and Expenses.**

5 1. *Claims for Attorneys' Fees, Costs, and Expenses.* A
6 claim for attorneys' fees, costs and expenses initially shall
7 be made in the pleadings, pretrial statement, or by motion
8 filed prior to trial or post-decree evidentiary hearing. Costs
and expenses also shall be claimed by an itemized
statement.

9 2. *Time of Determination.* Except as to temporary awards
10 of attorneys' fees and costs, when attorneys' fees are
11 claimed, the determination as to the claimed attorneys'
12 fees shall be included with a decision on the merits of the
case or as otherwise ordered by the court.

13 3. *Method of Establishing Claim.* A claim for attorneys'
14 fees, costs, and expenses shall be supported by an
15 itemized affidavit, exhibits, or, at the discretion of the
16 court, by testimony. If the motion is contested, opposing
17 parties may respond to the motion and a hearing may be
18 granted in the discretion of the court. In addition, the
court may refer issues relating to the value of services to
a family law master under Rule 72.

19 4. *Scope.* The provisions of subdivisions (1) through (3)
20 do not apply to claims for fees, costs, and expenses as
21 sanctions pursuant to statute or rule, or to causes in which
22 the substantive law governing the action provides for the
recovery of such fees, costs, and expenses as an element
of damages to be proved at trial.

1 **Summary of Proposed Amendment**

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3 The proposed amendments would conform the Family Law Rule to the
4 existing Civil Rule attorney’s fees, under ARCP 54(g) which requires a motion be
5 filed within 20 days of entry of the judgment. ARCP 54(g) states:

6 (1) *Claims for Attorneys' Fees.* A claim for attorneys' fees
shall be made in the pleadings.

7 (2) *Time of Determination.* When attorneys' fees are
8 claimed, the determination as to the claimed attorneys'
9 fees shall be made after a decision on the merits of the
10 cause. The motion for attorneys' fees shall be filed within
11 20 days from the clerk's mailing of a decision on the merits
of the cause, unless extended by the trial court.

12 (3) *Method of Establishing Claim.* A motion for attorneys'
13 fees may be supported by affidavit, and exhibits or, at the
14 discretion of the court, by testimony. If the motion is
15 contested, opposing parties may respond to the motion,
and a hearing may be granted in the discretion of the court.
In addition, the court may refer issues relating to the value
of services to a special master under Rule 53.

16 (4) *Scope.* The provisions of subparagraphs (1) through (3)
17 do not apply to claims for fees and expenses as sanctions
18 pursuant to statute or rule, or to causes in which the
19 substantive law governing the action provides for the
20 recovery of such fees as an element of damages to be
proved at trial.

21 The issue has been discussed by the Arizona Supreme Court in *Bollermann v.*
22 *Nowlis*, 234 Ariz. 340 (2014), where the Court discussed the issue related to a Court
23 not ruling on attorney’s fees, as follows:

24 ¶ 9 The civil rules are admittedly clearer on this point than
25 are the family rules. Civil Rule 58(g) specifies that no

1 judgment shall be entered that does not address attorneys'
2 fees, except as provided in Rule 54(b). Ariz. R. Civ. P.
3 58(g); see Nat'l Broker, 211 Ariz. at 217–18 ¶ 36, 119 P.3d
4 at 484–85. Under the family rules, “the determination as
5 to the claimed attorneys' fees shall be included with a
6 decision on the merits of the case or as otherwise ordered
7 by the court.” Ariz. R. Fam. L.P. 78(D)(2) (emphasis
8 added). We read the latter phrase as an allusion to the
9 procedure set forth in Rule 78(B) for entry of final
10 judgment on fewer than all the claims.

11 The proposed change would allow for fee awards to be denied if a Motion to
12 Amend is not timely filed. The proposed language would be:

13 **D. Attorneys' Fees, Costs, and Expenses.**

14 1. *Claims for Attorneys' Fees, Costs, and Expenses.* A
15 claim for attorneys' fees, costs and expenses initially shall
16 be made in the pleadings, pretrial statement, or by motion
17 filed prior to trial or post-decree evidentiary hearing. Costs
18 and expenses also shall be claimed by an itemized
19 statement.

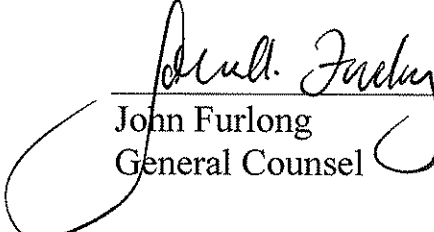
20 2. *Time of Determination.* Except as to temporary awards
21 of attorneys' fees and costs, when attorneys' fees are
22 claimed, the determination as to the claimed attorneys'
23 fees shall be included with a decision on the merits of the
24 case or as otherwise ordered by the court. **SHOULD THE
25 COURT RULE ON ALL PENDING ISSUES
EXCEPT ATTORNEY'S FEES IN A JUDGMENT,
THE CLAIM FOR ATTORNEY'S FEES SHALL BE
DEEMED DENIED AS OF THE DATE OF THE
ENTRY OF THAT JUDGMENT IF A SEPARATE
MOTION PURSUANT TO RULE 83 IS NOT FILED
WITHIN 15 DAYS OF THE ENTRY OF THE
JUDGMENT ON ALL OTHER ISSUES.**

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CONCLUSION

Under the current rule a minute entry could remain as a not final judgment indefinitely until the court rules on fees. The proposed change fixes this issue. The State Bar of Arizona respectfully requests amendment of Rule 78, Ariz. R. Fam. L. P. as stated herein.

RESPECTFULLY SUBMITTED this 8th day of January, 2016.



John Furlong
General Counsel

Electronic copy filed with the Clerk of the Arizona Supreme Court this 8th day of January, 2016.
by: 

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APPENDIX A

Rule 78

A. Definition; Form. "Judgment" as used in these rules includes a decree and an order from which an appeal lies. A judgment shall not contain a recital of pleadings or the record of prior proceedings, but may contain findings by a family law master appointed by the court.

B. Judgment upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, or third-party claim, or when multiple parties are involved, the court may direct the entry of final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. For purposes of this subsection, a claim for attorneys' fees may be considered a separate claim from the related judgment regarding the merits of a cause.

C. Entry of Judgment after Death of Party. Judgment may be entered after the death of a party upon a decision or upon an issue of fact rendered in the party's lifetime, except that an order dissolving the marriage may not be entered after the death of either party.

D. Attorneys' Fees, Costs, and Expenses.

1. Claims for Attorneys' Fees, Costs, and Expenses. A claim for attorneys' fees, costs and expenses initially shall be made in the pleadings, pretrial statement, or by motion filed prior to trial or post-decree evidentiary hearing. Costs and expenses also shall be claimed by an itemized statement.

2. Time of Determination. Except as to temporary awards of attorneys' fees and costs, when attorneys' fees are claimed, the determination as to the claimed attorneys' fees shall be included with a decision on the merits of the case or as otherwise ordered by the court. **SHOULD THE COURT RULE ON ALL PENDING ISSUES EXCEPT ATTORNEY'S FEES IN A JUDGMENT, THE CLAIM FOR ATTORNEY'S FEES SHALL BE DEEMED DENIED AS OF THE DATE OF THE ENTRY OF THAT JUDGMENT IF A SEPARATE MOTION PURSUANT TO**

**RULE 83 IS NOT FILED WITHIN 15 DAYS OF THE
ENTRY OF THE JUDGMENT ON ALL OTHER ISSUES.**

3. Method of Establishing Claim. A claim for attorneys' fees, costs, and expenses shall be supported by an itemized affidavit, exhibits, or, at the discretion of the court, by testimony. If the motion is contested, opposing parties may respond to the motion and a hearing may be granted in the discretion of the court. In addition, the court may refer issues relating to the value of services to a family law master under Rule 72.

4. Scope. The provisions of subdivisions (1) through (3) do not apply to claims for fees, costs, and expenses as sanctions pursuant to statute or rule, or to causes in which the substantive law governing the action provides for the recovery of such fees, costs, and expenses as an element of damages to be proved at trial.

E. Offers of Judgment Not Applicable. The procedure governing offers of judgment, authorized in civil actions under Ariz. R. Civ. Proc. 68, shall not apply in any legal matter subject to these Rules.