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**IN THE SUPREME COURT  
 STATE OF ARIZONA**

In the Matter of: )  
 )  
*Arizona Rules of* )  
*Family Law Procedure* )  
 )  
 )  
 \_\_\_\_\_ )

Supreme Court No. \_\_\_\_\_

**SECOND AND FINAL PETITION TO AMEND  
 ARIZONA RULES OF FAMILY LAW PROCEDURE  
 AND REQUEST TO CONSIDER RULE CHANGE  
 PETITION ON AN EXPEDITED BASIS**

**PETITION TO AMEND ARIZONA RULES OF FAMILY LAW PROCEDURE**

Pursuant to Rule 28, *Rules of the Supreme Court*, the Family Law Rules Review Committee, by and through its chair, the Honorable Norman J. Davis, Presiding Judge of the Family Court Department of the Maricopa County Superior Court, petitions the Court to approve various amendments to the *Arizona Rules of Family Law Procedure (ARFLP)* as reflected in the accompanying Appendix A. During its two-year review process, the Committee first identified a number of amendments that made minor substantive changes in family court procedures, or that were needed to clarify ambiguous or inconsistent provisions. The Committee's first Petition to Amend was to address these technical errors and minor substantive changes to rules in the *ARFLP* that the Committee determined were inaccurate, misleading, incomplete, unworkable or confusing. The Committee filed its first petition to amend *ARFLP* by the November 1, 2006

deadline, and the petition was circulated for public comment. The Committee has formally responded to the one formal comment received to the first petition, and it is now awaiting action by the Supreme Court.

Following its second year of reviewing *ARFLP*, the Committee has identified a number of more substantive rule changes that required further comment and debate by the Committee and the public. The Committee addressed these proposed revisions in several sessions and now requests appropriate amendments to the *ARFLP*. Appendix A contains some additional spelling, grammar and punctuation corrections, as well as minor wording changes that the Committee deemed necessary. These technical changes are not further discussed here in narrative form but are obvious in the context of the rule. With respect to the remaining more substantive changes set forth in detail in Appendix A, the Committee provides the following detailed explanation of the requested changes in those rules that modify or clarify existing procedure:

## I. GENERAL ADMINISTRATION

**Scope of Rules.** It is anticipated that the *Arizona Rules of Protective Order Procedure (ARPOP)* will become effective on January 1, 2008, and will proscribe detailed procedures for all protective order cases. Accordingly, Rule 1, *ARFLP*, is amended to remove protective orders from the provisions of the *ARFLP*, and to clarify that the *ARFLP* are applicable to family law matters arising out of Title 25, *Arizona Revised Statutes*.

**Change of Judge.** Rule 6 is modified to clarify that parties are not entitled to an additional change of judge or court commissioner upon the filing of one or more post-decree or post-judgment petitions. The current rule merely makes Rule 42(f), *ARCP*, applicable to all family law matters, but civil post-judgment proceedings are very limited and Rule 42(f), *ARCP*, does not specifically address this subject. The Committee agreed that this change is needed to

avoid confusion because of the high volume of post-decree and post-judgment petitions filed in family law cases, often over extended periods of time.

**Limited Scope Representation: Appearance and Withdrawal.** Rule 9(B) is amended to delete the provision that deemed this rule experimental in nature. This rule was set to expire three calendar years from January 1, 2006--the initial effective date of the rules. Having received significant positive feedback that limited scope representation has made legal representation more affordable and facilitated access to the courts, the Committee voted to approve this rule as a permanent rule.

**Public Access to Proceedings and Records.** Rule 13 is amended by adding subsection 13(D) to clarify that records of family court proceedings will be maintained and disclosed in accordance with Rule 123, *Rules of Supreme Court*. This amendment also provides a standard for the family court to seal or limit access to records if the confidentiality or privacy interest of the parties, their minor children or other persons outweighs the public interest in disclosure when the issue is not resolved by Rule 123, *Rules of Supreme Court*.

**Unsworn Declarations Under Penalty of Perjury.** Rule 14(B) is amended to clarify that unsworn declarations may be utilized when the sworn written declaration, verification, certificate, statement, oath or affidavit is required by statute.

## II. PLEADINGS AND MOTIONS

**Pleadings Allowed; Petition.** Rule 24(A) is amended to delete reference to protective orders that will be covered by the *Arizona Rules of Protective Order Procedure* expected to be adopted concurrently with these amendments.

**Service of Order to Appear and Petition.** Rule 27(C) is amended to correct an omission in the first requested revision of the rule with respect to the time for service of petitions

and orders to appear filed to commence proceedings that do not start with a summons. The petition and order to appear would be served, in accordance with Rules 40, 41 or 42, at least 20 days prior to the scheduled hearing unless otherwise directed by the court. Without amendment, the rules do not provide clear direction of the manner and time to serve these initial petitions and orders to appear.

**Motions for Reconsideration.** Rule 35(D) is amended to correct a mistaken reference to Rule 86. Rule 86, *ARFLP*, covers the impact of harmless error and the correct reference should be to Rule 85(C), *ARFLP*, which details the procedure for motions for relief from judgment. This change is also consistent with the parallel provisions of Rule 7.1, *Arizona Rules of Civil Procedure*. The Committee also agreed to add a provision to this rule to require motions for reconsideration to be filed within 15 days after entry of the judgment or order.

### III. PARTIES

**Process on Behalf of and Against Persons Not Parties.** Rule 38 is amended by adding a Committee Comment to indicate this rule is adapted from 71, *Arizona Rules of Civil Procedure*.

### IV. SERVICE OF PROCESS

**Summons; Form; Replacement Summons.** Rule 40(B) is amended to include additional language from A.R.S. §25-381.09 to notify the parties in the Summons that they may file or submit a petition with conciliation court “for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issue involved.” Amicable settlement remains a statutory function of conciliation court, and the absence of this statutory language could invite a misperception of the function of conciliation court.

**Service of Summons upon the State in Title IV-D Cases.** Rule 41(G) is amended to allow service upon the state in Title IV-D cases by any method allowed for other parties in Rule 41(C), *ARFLP*. The amendment also includes an alternate method of service upon the state by electronic service when authorized by administrative order of the presiding judge. When authorized, a party would be permitted to effect service upon the state by filing a *Notice of State Interest* with the clerk requesting electronic service upon the state and separately listing the documents to be served. After the clerk files, scans, and electronically transmits the documents to the electronic address designated by the state, service would be complete upon the clerk filing a *Proof of Service* document verifying that the documents and the *Notice of State Interest* were transmitted to and received by the state. This rule is designed to simplify requirements to serve the state in Title IV-D cases that predominately involve self-represented parents, and to promote more efficient processes for the court, the clerk, the state and the public.

**Copies to Assigned Judicial Officer.** Rule 43(D)(3) is added to require copies of documents requesting court action filed after the original petition be provided to the judicial officer assigned to the case with a statement of such compliance. This rule is necessary for effective case management and to avoid the delay and confusion resulting from motions and requests being filed without the judicial officer being notified that action is needed on the motion or request.

**Sensitive Data.** Rule 43(G)(2) is amended to include driver's license numbers and financial personal identifying numbers within the definition of "sensitive data" to protect such information from public access and potential use in identity theft schemes. The rule is also amended to allow use of the last four digits of sensitive data in filed documents.

## V. DEFAULT DECREE, CONSENT DECREE, AND DISMISSAL

**Judgment by Default.** Rule 44(B)(1)(c) is amended to clarify that custody and parenting time orders cannot be obtained without a hearing. Without the amendment it appears that petitioners could obtain a custody order by motion in a default proceeding without a hearing in paternity or maternity cases, but not in a dissolution proceeding. The Committee agreed that orders respecting custody and parenting time of minor children should not be entered without an opportunity for a judicial officer to question the petitioner concerning the appropriateness of the parenting plan and the best interests of the minor children.

**Past Support and Arrearage Judgments.** A new rule 44(B)(3) is added to require that defaulted respondents must be notified of the specific amount sought for past child support accruing for periods of time prior to the date of filing of the petition. These judgments create unique collection problems due to the obligor not previously being ordered to pay a monthly sum until the entry of the lump sum past support judgment that typically consolidates up to 3 years or more of child support into one judgment. The Committee agreed that requiring notice of the specific amount sought in either the petition or default notice would encourage greater participation by respondents and result in more complete evidence being presented to the court to determine the amount of the past support judgment.

**Informing Defaulted Party.** A new Rule 44(B)(4) is added to require any petitioner that obtains a decree or judgment by default to certify and mail a copy of the decree to the party in default within 24 hours of the petitioner's receipt of the decree or judgment, except in those cases where a default judgment was obtained after service by publication. Some counties have required this action for years in family law cases by local rule, and the Committee agreed that all

parties should be made aware of the relief granted in a default decree or judgment as soon as possible.

**Voluntary Dismissal.** Rule 46(A) is amended to allow voluntary dismissal of a petition by the filing party at any time prior to the filing of a response, rather than prior to service of the response as now stated in the rule. Without amendment anomalous results could occur because a petitioner would be authorized to dismiss a petition after a response is filed but before service of the response has been completed, even if service was delayed or overlooked.

**Dismissal Authority.** A new rule 46(E) is added to clarify that the authority of the court to issue notices and to dismiss cases and post-decree petitions for lack of service under Rule 41(1) and for lack of prosecution under Rules 46 and 91(R) may be performed by court administration or by appropriate electronic process under supervision of the court. This addition was deemed necessary to improve case management and court efficiency, particularly in high-volume courts where these largely ministerial functions could be unduly delayed without administrative and computer assistance.

## VI. TEMPORARY ORDERS

**Temporary Orders.** Rule 47(F) is amended to require a response to a motion for temporary orders to be filed and served upon the opposing party or counsel not later than three “judicial” days prior to the hearing. Without the amendment, adequate time to prepare for the hearing is not allowed if the response is received only three calendar days before the hearing, particularly if served just prior to a weekend or holiday. This amendment also requires any response to a Motion for Temporary Orders to be verified in the same manner as the Petition.

**Requirements Prior to Conference or Hearing.** Rule 47(G) is amended to add the word “judicial” and thereby require the parties to exchange exhibits and information “at least three (3) judicial days prior to an evidentiary hearing” on temporary orders.

## VII. DISCLOSURE AND DISCOVERY

**Resolution Statement.** Rule 49(A) is amended to clarify that parties to grandparent visitation actions under A.R.S. §25-409, and parties to *in loco parentis* petitions filed pursuant to A.R.S. §25-415 are not required to prepare and file a form Resolution Statement unless otherwise ordered by the court. The form Resolution Statement approved by *ARFLP* contains issues and information beyond that normally relevant in grandparent visitation and *in loco parentis* matters. The Committee agreed that parties to such actions were not normally completing such Statements currently and leaving the rule as written could give the impression that such action was required when it does little to assist in resolution and identification of the issues. When appropriate the amendment would allow the court to specify when a statement is required and the information to be included in the statement.

**Child Custody or Parenting Time Disclosure.** A new Rule 49(B) is added (and subsequent subparagraphs re-designated as C through I) to require additional disclosure when child custody or parenting time is at issue. This rule change would require all parties involved in custody or parenting time disputes to disclose evidence of any past or present protective order proceedings, treatment for psychiatric or psychological issues, anger management, substance abuse, or domestic violence within five (5) years, any criminal charges or convictions within ten (10) years, and any Child Protective Services investigations occurring within ten (10) years.

**Disclosure.** Rule 49(D)(3) is re-written and replaced to more clearly specify the documents required to be disclosed concerning pensions, retirement, stock options and annuities,

individual retirement accounts, 401(k) accounts, and other retirement and employment benefit accounts. The Committee heard from and relied upon experts to more closely match disclosure requirements to the information needed to properly prepare Qualified Domestic Relations Orders and other orders to divide these assets.

## **VIII. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION (ADR)**

**Conciliation Counseling/Petition for Conciliation.** Rule 68(A)(2)(a) is amended to correct an inconsistency between this rule and A.R.S. 28-381.018. The statute directs that a stay of proceeding commence upon the filing of a petition for conciliation, rather than upon acceptance of the petition by the conciliation court as specified in the current version of the rule.

**Mediation Agreements.** Rule 68(B)(6)(b) is amended to add a requirement that Conciliation Services notify the court when a mediation agreement is not reached because of the timely filing of an objection to the agreement as allowed by Rule 68. This change will allow the court to proceed with the case more expeditiously. Rule 68(B)(6)(c) is also amended to allow the court to set further hearing to consider the agreement when, in the judgment of the judicial officer, acceptance or rejection of the agreement is not clearly indicated.

**Failure to Appear at Conciliation ADR Processes.** Rule 68(B)(7) is deleted and expanded as a new rule 68(F) to provide sanctions for a party's failure to appear at all scheduled mediation conferences, open negotiations, and other alternative dispute resolution (ADR) proceedings. As written such sanctions would only apply to mediation conferences and not other ADR proceedings.

**Family Law Master—Retirement Benefits, Stock Options and Other Employment Related Compensation.** Rule 72(L) is added to establish a more detailed and accurate method of dividing retirement benefits, stock options and other employment related benefits through the

appointment of an attorney or other qualified professional as a Family Law Master to perform these complex duties as directed in the court's order of division and with the powers enumerated in Rule 72. This would include the power to require production of documents and answers to interrogatories, to order parties to appear and provide needed information, and to issue subpoenas to obtain needed records to effectuate the terms of the court's order of division. The Committee heard from experts in the field and agreed that such procedures are frequently necessary to deal with this complex area of family law.

### **IX. PRETRIAL AND TRIAL PROCEDURES**

**Pretrial Statement.** Rule 76(C)(1) is amended to allow the parties to file either a joint or separate pretrial statement unless the court specifies the type of statement to be filed. Given the large numbers of self-represented litigants in family court, the Committee agreed that this change would encourage better compliance with the rule, engender more respect for the law, conform to current practices, and better serve the unique circumstances of family law cases that make it difficult for legally untrained litigants to meet and prepare meaningful joint statements in many cases.

### **X. JUDGMENTS AND DECREES**

**Motion to Alter or Amend a Judgment.** Rule 84 is amended to delete language that is inconsistent with the Arizona Rules of Civil Appellate Procedure.

### **XI. POST-DECREE/POST-JUDGMENT PROCEEDINGS**

**Hearings on Motions and Petitions.** Rule 91(N) is amended to add several provisions designed to reduce ambiguity in the current rule and avoid confusion with pre-decree processes. The amendment distinguishes a Post-decree or Post-judgment Management Conference (PMC) from the Rule 76 pre-decree and pre-judgment Resolution Management Conference (RMC), and

customizes the requirements for the PMC to more closely meet the needs of post-decree and post-judgment litigation. While the requirements of both conferences remain similar, the amendment eliminates the need for parties to prepare a Resolution Statement in post-decree and post-judgment matters unless specifically directed to do so by the court. The global Resolution Statement applicable in pre-decree and pre-judgment matters covers all family law issues and is not well suited to frame and assist in the resolution of issues raised in post-decree and post-judgment petitions that frequently only address the modification or enforcement of a small portion of the decree or judgment. If the post-decree or post-judgment petition and/or response do not adequately address the positions of the parties, the amended rule allows flexibility for the court to order an appropriate Resolution Statement be submitted. The remaining changes to this rule are designed to clarify the parties' obligations to meet and confer and comply with Rule 91(N) disclosure requirements prior to the PMC, and to establish requirements for a pre-hearing statement prior to trial.

**Disclosure in Custody Modification.** Rule 91(P) is amended to require the parties to a post-decree or post-judgment proceeding to modify child custody or parenting time to disclose the additional information required in pre-decree custody proceedings as provided in the amendment to Rule 49(B).

## XII. CIVIL CONTEMPT AND ARREST WARRANTS

**(NO CHANGES)**

## XIII. FAMILY LAW FORMS

**References to Forms.** Throughout the rules, references to the forms have been made consistent. 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 grammatical errors, (2) streamline the forms, (3) make the forms consistent with the rules, and (4) make the forms internally consistent.

### **ARIZONA RULES OF CIVIL PROCEDURE**

The *Arizona Rules of Civil Procedure* contain five (5) specific provisions that apply or relate only to family law (domestic relations) cases that need to be eliminated. The subject matter of these civil rules is covered by the new *ARFLP* for family law cases. The specifics of these rules and how the Committee recommends changes to the *Arizona Rules of Civil Procedure* are as follows:

**Classification of Civil Actions--Rule 8(h)(1), ARCP.** Civil Rule 8(h)(1) should be amended to delete reference to “Domestic Relations”. This rule with respect to indicating a case is one of “Domestic Relations” is outdated and little used in the family court, particularly in counties that have separate family court departments. The rule should be amended as follows:

#### **Rule 8(h). Classification of Civil Actions**

**(1) Counsel for plaintiff or petitioner shall describe in the caption of each complaint or petition filed with the court the nature of the civil action or proceeding, as follows: Tort Motor Vehicle, Tort Non-Motor Vehicle, Contract, Domestic Relations, Eminent Domain or Non-classified Civil, Writ of Garnishment.**

**Inactive Calendar in Domestic Relations Cases—Rule 38.1(d), ARCP.** Civil Rule 38.1(d) makes provisions for placing civil cases on the inactive calendar, and includes a specific exception to shorten this time to 120 days in domestic relations cases. Rule 46, ARFLP, now covers the subject of this rule and there is no longer a need for the civil exception. Civil Rule 38.1(d) should be amended to delete application to family law cases as follows:

**Inactive Calendar.** The clerk of the court or court administration shall place on the Inactive Calendar every case in which a Motion to Set and Certificate of Readiness has not been served within nine months after the commencement thereof, ~~except that in domestic relations cases, by general order of the presiding judge in any county or by local rule, the time within which domestic relations cases shall be placed on the Inactive Calendar may be shortened to not less than 120 days.~~ All cases remaining on the Inactive Calendar for two months shall be dismissed without prejudice for lack of prosecution, and the court shall make an appropriate order as to any bond or other security filed therein, unless prior to the expiration of such two month period;

- (1) A proper Motion to Set and Certificate of Readiness is served ; or
- (2) The court, on motion for good cause shown, orders the case to be continued on the Inactive Calendar for a specified period of time without dismissal.

**Judgment by Default—Rule 55(b)(1)(ii), ARCP.** Civil Rule 55(b)(1)(ii) outlines the procedure to be followed by family court litigants to obtain a judgment by default by motion in some less-complicated matters. The subject matter of this rule is now covered by Rule 44(B)(1), *ARFLP*, and the civil rule is now both redundant and inconsistent with the new family law rule. Accordingly, Civil Rule 55(b) should be amended as follows:

**Rule 55(b). Judgment by Default**

Judgment by default may be entered as follows:

1. By Motion.

(i) (No Change Except To Delete Number)

~~(ii) When a petition for legal separation, dissolution, or annulment of marriage has been filed, a decree may be entered upon motion supported by the affidavit of either or both parties to the marriage, provided that : a) there are no minor children of the relationship of the parties born before or during the marriage or adopted by the parties during the marriage, and the wife, to affiant's knowledge, is not pregnant; b) neither party has any~~

~~interest in real property wherever situated; c) the parties waive any right to spousal maintenance; d) there are no unpaid obligations in excess of \$10,000 incurred by either or both of the parties from the date of the marriage; and e) the total fair market value of community personal property assets, excluding all encumbrances, is less than \$15,000. The supporting affidavit shall set forth facts showing that jurisdictional requirements have been met and that the provisions of A.R.S. §25-381.09 have been met or do not apply. The affidavit shall also set forth factual averments supporting the relief requested in the proceeding, including an award of attorney's fees, if applicable. A default decree under this rule is not available if the adverse party is an infant or incompetent person, or if the adverse party has otherwise appeared and default has not been entered for failure to appear unless the parties have agreed that the matter may proceed as if by default.~~

**Proof of authority by attorney for defendant not appearing in divorce action—Rule**

**80(f), ARCP.** Civil Rule 80(f) allows attorneys to appear by affidavit in “divorce actions”. This rule is outdated, and Rule 39, ARFLP, now covers the manner of appearance by counsel and parties. The civil rule should be entirely deleted as follows:

**~~Rule 80(f). Proof of authority by attorney for defendant not appearing in divorce action~~**

**~~In divorce actions the attorneys appearing for a defendant not personally served shall be affidavit show their authority to act for such defendant.~~**

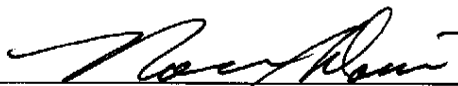
**Form 7. Domestic Relations Interrogatories—Rule 84, ARCP.** Civil Rule 84 approves uniform interrogatories for use in “domestic relations” matters. Rule 97, ARFLP, approves, *inter alia*, various standard forms for use in family law cases, including Form 7 (Uniform Family Law Interrogatories) that eliminate the further need for uniform domestic relations interrogatories in the civil rules. Because of their length, the uniform Domestic Relations Interrogatories included as Form 7 of Civil Rule 84 are not included in this petition,

but this form is solely applicable to family law cases, is inconsistent in many respects with the current form in the *ARFLP*, is now unnecessary, and should be eliminated in its entirety.

### 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, to amend and eliminate the duplicative *Rules of Civil Procedure* as set forth in this petition, and moves that these changes be expedited with an effective date of January 1, 2008, following circulation for public comment, all in accordance with the form of order set forth in accompanying Appendix B, or such other order that the Court deems appropriate.

Respectfully submitted this 18<sup>th</sup> day of October, 2007.



Hon. Norman J. Davis, Chair  
Family Law Rules Review Committee

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

Copy mailed or hand-delivered this \_\_\_\_\_ day  
of October, 2007 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  
Patience Huntwork, Chief Staff Attorney