ARIZONA RULES OF FAMILY LAW PROCEDURE

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I. GENERAL ADMINISTRATION

Rule 1. Scope of Rules

These rules govern the procedure in the Superior Court of Arizona in all family law cases, including paternity, and all other matters~~,~~ arising out of Title 25, *Arizona Revised Statutes* (*A.R.S.*) ~~and, where ordered by the presiding judge of a county or the presiding judge's designee, Orders of Protection, Injunctions Against Harassment and all proceedings, judgments or decrees related to the establishment, modification or enforcement of such orders, including contempt.~~ These rules should be construed and enforced in a manner to secure the just, prompt and inexpensive determination of every action and proceeding.

COMMITTEE COMMENT

This rule is based on Rule 1, *Arizona Rules of Civil Procedure*. Wherever the language in these rules is substantially the same as the language in other statewide rules, the case law interpreting that language will apply to these rules.

Rule 2. Applicability of Other Rules

A. Applicability of *Arizona Rules of Civil Procedure.* The *Arizona Rules of Civil Procedure* apply only when incorporated by reference in these rules.

B. Applicability of *Arizona Rules of Evidence*

1. Upon notice to the court filed by any party at least forty-five (45) days prior to hearing or trial, or such other date as may be established by the court, any party may require strict compliance with ~~all or part of~~ the *Arizona Rules of Evidence*, except as provided in sub~~section~~division 2(B)(3). If a hearing or trial is set upon less than sixty (60) days prior notice, the notice provided for in this paragraph will be deemed timely if filed within a reasonable time after the party receives notice of the hearing or trial date.

2. If no such notice is filed, all relevant evidence is admissible, provided, however, that the court shall exclude evidence if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay, waste of time, needless presentation of cumulative evidence, lack of reliability or failure to adequately and timely disclose same. This admissibility standard shall replace R~~r~~ules 403, 602, 801-806, 901-903 and 1002-1005, *Arizona Rules of Evidence*.~~,~~ E~~e~~xcept as provided in sub~~section~~division 2(B)(3) ~~of this rule~~. All remaining provisions of the *Arizona Rules of Evidence* apply.

3. ~~The foregoing notwithstanding~~ Regardless of whether a notice is filed under subdivision 2(B)(1):

a. ~~,r~~ Records of regularly conducted activity as defined in Rule 803(6), *Arizona Rules of Evidence*, may be admitted into evidence without testimony of a custodian or

other qualified witness as to its authenticity if such document (~~a~~ i) appears complete and accurate on its face, (~~b~~ ii) appears to be relevant and reliable, and (~~c~~ iii) is seasonably disclosed and copies are provided at time of disclosure to all other parties~~.~~; and

~~4.~~ b. Any report, document, or standardized form required to be submitted to the court for the current hearing or trial may be considered as evidence if either filed with the court or admitted into evidence by the court.

C. Applicability of Local Rules. To the extent these rules are inconsistent with local rules, the provisions of these rules shall apply.

COMMITTEE COMMENT

Rule 2(B)(4) allows the court to consider as evidence at any stage of the proceedings any report or document ordered or required by the court to be submitted to the court. This allows the court to consider drug testing results and reports from court-appointed attorneys, ~~guardians ad litem~~, custody or parenting time evaluators, conciliation services, family law masters, Parenting Coordinators, and other court-appointed experts. The determination of the evidentiary value of the report or document for any proceeding other than ~~is limited to~~ the particular trial, hearing or conference for which it ~~is~~ was prepared shall be left to the discretion of the ~~C~~court ~~and filed~~.

Rule 3. Definitions

A. Parties. Reference to a party to the action may include the state.

B. Definitions. In these rules, unless the context otherwise requires, the following definitions shall apply:

1. *In camera.* If the court orders that a document be reviewed *in camera*, the party who possesses the document shall submit the document *ex parte* to the court. The court shall then privately review the document to determine whether it should be further disclosed under applicable law and rules.

2. *Motion.* A motion is a written request made after a petition seeking relief is filed.

3. *Moving Party.* The party (movant or applicant) who has filed a written request for relief, regardless of whether or not that party was the petitioner or respondent in the initial petition.

4. *Petition.* A petition is the initial pleading that commences a family law case or the initial pleading that commences a post-decree matter. All initial documents shall be denominated as a petition followed by brief descriptive wording summarizing the nature of the relief sought.

5. *Petitioner.* A petitioner is a person or entity who files the first petition, and shall be referred to as such in all subsequent documents, including all post-decree petitions, motions and documents in the same case.

6. *Respondent.* A respondent is any opposing party other than the petitioner.

7. *Response.* A response is a document that substantially responds to a petition or a motion, and includes an answer to a petition.

8. *Sealing.* If the court orders that a paper or electronic record or portion of a record is to be sealed, the record or portion of the record shall be sealed by the Clerk of the Court, and the record or portion of the record shall be accessible or disclosed only to those persons designated by order of the court. This definition is not intended to affect the substantive rights of any party.

9. *Title IV-D.* Title IV-D means Title IV-D of the Social Security Act, 42 U.S.C. 651 *et seq.* Title IV-D is administered in Arizona by the Division of Child Support Enforcement (DCSE) of the Department of Economic Security.

10. *Witness.* A witness is a person whose declaration under oath or affirmation is received as evidence for any purpose, whether such declaration is made on oral examination, by deposition or by affidavit.

COMMITTEE COMMENT

The definition of "witness" in subdivision B(10) is based on Rule 43(a), *Arizona Rules of Civil Procedure*.

Rule 4. Time

A. Computation. In computing any period of time prescribed or allowed by these rules, by any local rules, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. When the period of time prescribed or allowed, exclusive of any additional time allowed under paragraph D, is less than eleven (11) days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation. When that period of time is eleven (11) days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.

B. Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not

extend the time for taking any action under Rules 83(D), 84, and 85(C), except to the extent and under the conditions stated in them, unless the court finds (1) that a party entitled to notice of the entry of judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and (2) that no party would be prejudiced, in which case the court may, upon motion filed within thirty days after the expiration of the period originally prescribed or within 7 days of receipt of such notice, whichever is earlier, extend the time for taking such action for a period of 10 days from the date of entry of the order extending the time for taking such action.

C. Orders to Appear. A judge of the superior court, upon request or petition supported by affidavit showing cause therefore, may issue an order requiring a party to appear and may make the order returnable at such time as the judge designates. Any such order to appear shall be served in accordance with the requirements of Rule 40, 41, ~~or~~ 42, or Rule 91 as applicable, of these rules or, if the party to whom the order is directed has entered an appearance in the action, in accordance with the requirements of Rule 43, within such time as the judge shall direct.

D. Additional Time after Service by Mail. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by a method authorized by Rule 43(C)(2)(c)~~,~~ or (d), ~~or (e),~~ five (5) calendar days shall be added to the prescribed period. This rule has no application to the distribution of notice of entry of judgment required by Rule 81(D).

COMMITTEE COMMENT

This rule is based on Rule 6, *Arizona Rules of Civil Procedure*.

2006 COURT COMMENT

Rule 4(D) was amended (i) to transfer and slightly modify the computation of time provision for electronic service and delivery in Rule 124(g) of the Rules of the Supreme Court of Arizona to Rule 4(D); (ii) to adopt a similar rule for service made under the other methods authorized under amended Rule 43(C)(2)(d) and (e); and (iii) to clarify an ambiguity in the rule relating to Rule 81(D).

As amended, the five-day "mailing rule" applies to service authorized by Rule 43(C)(2)(c), (d) [deleted by amendment effective January 1, 2008] or (e) [relettered as (d) by amendment effective January 1, 2008]. Rule 4(D)'s reference to the "mailing" of a notice of entry of judgment under Rule 81(D) was changed to "distribution" to conform with Rule 81(D), which allows a notice of entry of judgment to be "distributed" by the clerk by mail, electronic mail or delivery to an attorney drop-box.

Previously, Rule 124(g) provided a document that was served electronically after 5:00 p.m. was to be treated as if served or delivered the following day. Rather than have a time computation rule that applies only to electronic service, this provision was not incorporated to Rule 4(D).

Rule 5. Consolidation

A. Scope of Consolidation. When actions within the scope of these rules involving a common child, common parties, or a common question of law or fact, are pending before the court, the court may order a joint hearing or trial of any or all the matters in issue in the actions or order all the actions consolidated, and the court may make such orders concerning proceedings therein to avoid unnecessary costs or delay or to serve in the best interest of a minor child.

B. Lowest Case Number. Unless otherwise ordered by the court, when two or more cases are consolidated, the clerk of the court shall regard the number of the case filed first as the controlling number of the consolidated cases, and all further pleadings and papers shall be filed and docketed under that number only. Unless the court shall otherwise specify, it will be presumed that the consolidation is for all purposes, and not merely for the purpose of trial. Unless the court shall otherwise order, motions to consolidate shall be heard by the judge to whom the earliest-filed case is assigned. A case involving only an order of protection may be consolidated into the substantive family law case.

C. Duplicate Petitions. When two or more cases are consolidated by court order wherein the parties have previously filed competing or duplicate petitions that substantially respond to the issues in the opposing petition by stating detailed allegations, requests, or positions on the issues, such petitions shall also serve in all respects as responses to the opposing petitions, unless the court, on motion of any party or its own motion, orders further response.

COMMITTEE COMMENT

This rule is based on Rules 42(a) ~~and 65(a)~~, *Arizona Rules of Civil Procedure*.

Rule 6. Change of Judge

All notices and requests for change of judge shall be made in accordance with Rule 42(f), *Arizona Rules of Civil Procedure*. The filing of one or more post-decree or post-judgment petitions does not entitle any party to an additional notice of change of judge or court commissioner.

Rule 7. Protected and Unpublished Addresses

A. When Filing an Initial or Post-judgment Petition or Motion. Any person filing an initial or post-judgment petition, motion or response, whose address is not known to the other party and who reasonably believes that physical or emotional harm may result to the person or a minor child if the person's address is not protected from disclosure, may request the court to designate that party's address as protected by:

1. filing the substantive petition, motion or response thereto with no address included on it; and

2. filing a written request in a form substantially similar to ~~using~~ ~~the~~ Form 15 Request for Protected Address; and ~~Form, Rule 97, Form 15; and~~

3. lodging a proposed form of order with the court, ordering that the address be protected, except that if there is a valid Order of Protection and the clerk can verify the existence of the Order of Protection, address confidentiality shall be automatic upon filing a written request as required by subdivision A(2) ~~above~~; and

4. filing the party's address on a separate sheet of paper for court use.

If the court orders that the address shall be protected, the clerk of the court shall thereafter protect the person's address from public disclosure until the court orders otherwise. A person whose address is protected from disclosure under this rule may be served with all subsequently filed documents, by regular first-class mail at the address provided to the clerk in the manner provided in this rule. If the court does not order that the party's address is protected, all subsequent filings must include the party's address.

B. Court Action.

1. Within five (5) days of the filing of a request for an address to be protected, the court shall rule on the request, *ex parte*, without a hearing, unless the court finds it appropriate to set the request for hearing. If the court sets the request for hearing, all parties who have appeared shall be notified of the hearing, and the hearing shall be held within twenty (20) days of the filing of the request.

2. At any time during the proceedings, the court may order that any protected address no longer be protected upon request of the party whose address is protected or after a hearing and upon a finding that there is no reasonable belief that physical or emotional harm may result to the person with the protected address or to a minor child.

C. When Serving a Response or Document upon a Party with a Protected Address. Any person required under these rules to serve a response or other document upon a person whose address is ordered protected from disclosure under this rule may serve the same by delivering true and correct copies of the documents to be served, together with the proper fee established by administrative order to cover the cost of service, to the clerk of the court. The clerk shall promptly mail the documents by regular first-class mail to the most recent protected address provided to the clerk, and service shall be deemed complete upon mailing. The clerk shall promptly file a written statement verifying the documents that were mailed and the date of mailing to the protected address signed by the clerk or deputy clerk who mailed the documents. All documents mailed to a protected address shall bear the clerk's return address, and a notation of any process returned as undelivered shall be made in the court file.

D. Continuing Duty to Provide the Clerk with Current Address. Any person whose address is ordered protected from disclosure under this rule shall have a continuing duty to provide the clerk of the court with a current and correct mailing address where the person can be served with process until one of the following events occur:

1. the person whose address is ordered protected files a written notice of published address in the court file, containing both the person's current mailing addresses where future service can be accomplished under these rules, and the person mails a copy of the notice by regular first-class mail to the last address of all persons who have previously appeared in the action; or

2. the initial or post-judgment petition or motion has been fully adjudicated by the entry of a final appealable order, judgment or decree, and the time to appeal such order, judgment or decree has expired such that personal service is again required for subsequent petitions under Rule 43(C)(2), as appropriate.

E. Protecting the Address in a Title IV-D Case. Nothing in this rule is intended to change the practice of protecting the address of a parent seeking services in a Title IV-D case as required by federal law.

COMMITTEE COMMENT

To provide protection to litigants and children subjected to domestic violence, any party may file or respond to a family law proceeding without disclosing that person's address once the court has approved the action and ordered the address protected. This rule is not intended as an alternative to normal service requirements where a party or minor child is not in danger from domestic violence. Any party choosing this alternative is required to continually maintain a current and correct address with the clerk of the court where he or she can be served with process, until the current proceedings are completed with the entry of a final order, judgment or decree and the time for appeal has passed or the person whose address is protected files and serves a written notice of a current unpublished mailing address. In reference to subdivision (A)(3) of this rule, the Committee recognizes that not all courts may have the resources and electronic capability to verify Orders of Protection; however, where verification is possible, address confidentiality should be automatic.

Rule 8. Telephonic Appearances and Testimony

A. Oral Argument or Appearance on Any Motion or Other Proceeding. The court may, in its discretion, except as otherwise provided by A.R.S. § 25-1256(F), order or allow oral argument or appearance on any motion or other proceeding by speaker telephonic conference call, or regular telephonic conference call, provided the conversations of all parties and counsel are audible to each participant, the judge and, where applicable, the court reporter or electronic recording. The party requesting telephonic argument shall set up the conference call and, unless otherwise ordered by the court, pay for same.

B. Party or Witness Testimony. Upon request of a party or witness, or on its own motion, and upon finding that no substantial prejudice will result to any party by allowing telephonic or video conference testimony, the court may allow a party or witness to give testimony at any evidentiary hearing or trial telephonically or by video conference if the court finds, as to a party: that the party is reasonably prevented from attending the hearing or trial, or that attendance in person at hearing or trial would be a burdensome expense to the party; and, as to a witness: (1)

that the witness is reasonably prevented from attending the hearing or trial, (2) that the witness would be unduly inconvenienced by attending the hearing or trial, or (3) that attendance in person at hearing or trial would be a burdensome expense to the witness.

C. Providing Documents for Telephonic or Video Conferences. Any documents a party wishes to introduce into evidence through a party or witness appearing telephonically or by video conference shall, where practicable, be provided in advance to the party or witness. Exact duplicates shall be provided to opposing counsel with an affirmation on the record by the party introducing same that they are true and correct copies of the documents provided to the party or witness who will be appearing telephonically or by video conference.

D. Filing a Request for a Telephonic or Video Conference. Any party intending to have a party or witness give testimony at trial or evidentiary hearing telephonically or by video conference, shall file a request for same not later than thirty (30) days prior to the trial or evidentiary hearing unless the time to trial or evidentiary hearing is less than thirty (30) days, in which case the request shall be filed not later than five (5) days prior to time of trial or evidentiary hearing, unless the party is relieved of this time requirement by the court. Opposition to said request shall be made within five (5) days after service, following which the court may, in its discretion, rule upon said request with or without hearing. Unless otherwise ordered by the court, the party requesting telephonic testimony shall arrange and pay for same.

Rule 9. Duties of Counsel

A. Attorney of Record: Withdrawal and Substitution of Counsel

1. *Attorney of Record: Duties of Counsel.* No attorney shall appear in any action or file anything in any action without first appearing as counsel of record. Except as pursuant to paragraph B, an attorney of record shall be deemed responsible as attorney of record in all matters before and after judgment until the time for appeal from a judgment has expired or a judgment has become final after appeal or until there has been a formal withdrawal from or substitution in the case.

2. *Withdrawal and Substitution.* Except pursuant to paragraph B, or when substituting counsel with consent of the client, or where provided otherwise in any local rules pertaining to family law cases, no attorney shall be permitted to withdraw, or be substituted, as attorney of record in any pending action except by formal written order of the court, supported by written application setting forth the reasons therefor together with the name, mailing address, and telephone number of the client, unless protected pursuant to Rule 7, as follows:

a. Where such application bears the written approval of the client, it shall be accompanied by a proposed written order and may be presented to the court *ex parte*. The withdrawing attorney shall give prompt notice of the entry of such order to all other parties or their attorneys.

b. Where such application does not bear the written approval of the client, it shall be made by motion and shall be served upon the client and all other

parties or their attorneys. The motion shall be accompanied by a certificate of the attorney making the motion that (1) the client has been notified in writing of the status of the case including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanctions, or (2) the client cannot be located or for other reasons cannot be notified of the pendency of the motion and the status of the case.

c. No attorney shall be permitted to withdraw as attorney of record after an action has been set for trial unless:

1) the substituting attorney signs the application stating that such attorney is advised of the trial date and will be prepared for trial, or the client signs the application stating that the client is advised of the trial date and has made suitable arrangements to be prepared for trial, or

2) the court finds good cause to permit the attorney to withdraw.

B. Limited Scope Representation: Appearance and Withdrawal. ~~This provision shall be deemed experimental in nature and shall expire three (3) calendar years from the initial effective date of these rules unless otherwise extended.~~

1. *Limited Appearance.* An attorney may make a limited appearance subject to E.R. 1.2, *Arizona Rules of Professional Conduct*, by filing a notice substantially similar to Form 1, Notice of Limited Scope Representation, ~~as prescribed in Rule 97, Form 1~~, stating that the attorney and the party have a written agreement that the attorney will provide limited scope representation to the party and specifying the matter or issues with regard to which the attorney will represent the party. Service on an attorney who has made a limited appearance for a party shall be valid, to the extent permitted by statute and Rule 43(C), in all matters in the case but shall not extend the attorney's responsibility for representation of the client beyond the specific matter for which the attorney has appeared. Nothing in this rule shall limit an attorney's ability to provide limited services to a client without appearing of record in any judicial proceedings.

2. *Withdrawal and Substitution.* In addition to the provisions for withdrawal of counsel pursuant to paragraph A ~~of this rule~~, an attorney who has made a limited appearance in an action shall be permitted to withdraw, or be substituted, as attorney of record in any pending action as set forth in this rule.

a. *With Consent.* Upon the attorney's completion of the task specified in the Notice of Limited Scope Representation, the attorney shall file a Notice of Withdrawal of Attorney with Consent, signed by both the attorney and the party, stating that the attorney will no longer be representing the party, and, unless protected pursuant to Rule 7, stating the last known address and telephone number of the party who will no longer be represented, and shall lodge a form of order to be signed by the court. The attorney shall provide a

copy of the notice to the party who will no longer be represented and to all other parties or their attorneys, if they are represented by counsel.

b. *Without Consent.* Notwithstanding paragraph A, an attorney who has completed the task specified in the Notice of Limited Scope Representation may use the procedure in this rule to request that the attorney be withdrawn as counsel in the case in which the attorney has appeared before the court as attorney of record and the client has not signed a Notice of Withdrawal with Consent. Such request shall be made by motion and shall be served upon the client and all other parties or their attorneys, along with a proposed form of order. If no objection is filed within ten (10) days from the date the motion is served on the client, the court shall sign the order. After the order is signed, the attorney shall serve a copy of the signed order on the client. If an objection is filed within ten (10) days of service of the motion, the court may conduct a hearing to determine whether the task for which the attorney appeared has been completed.

C. Responsibility to Court. Each attorney shall be responsible for keeping the court advised of the status of cases in which that attorney has appeared and for being informed of ~~or their positions on the calendars of the court and of~~ any assignments for hearing or argument. Upon relocation, each attorney shall advise the clerk of court and court administrator, in each of the counties in which that attorney has cases that are pending, of the attorney's current office address and telephone number.

COMMITTEE COMMENT

This rule is based on Rule 5.1, *Arizona Rules of Civil Procedure*. This rule will be reviewed in two (2) years by a committee appointed by the Supreme Court to review the *Arizona Rules of Family Law Procedure.*

Examples of limited scope services under paragraph B that a client may seek from a licensed attorney ~~are stated~~ may be found in ~~Rule 97,~~ Form 1, Notice of Limited Scope Representation, and include but are not limited to such matters as protective orders, establishment or modification of child support, temporary orders, and Qualified Domestic Relations Orders (QDROs).

Rule 10. Representation of Children; Minors and Incompetent Persons

A. Appointment of Child's Attorney, Best Interests Attorney, and Court-Appointed Advisor

1. The court may appoint one or more of the following:

a. a best interests attorney;

b. a child's attorney; or

c. a court-appointed advisor.

2. The court may appoint an attorney to represent a child in a family law case pursuant to A.R. S. § 25-321 or a court-appointed advisor if it finds any of the following:

a. there is an allegation of abuse or neglect of a child;

b. the parents are persistently in significant conflict with one another;

c. there is a history of substance abuse by either parent, or family violence;

d. there are serious concerns about the mental health or behavior of either parent;

e. the child is an infant or toddler;

f. the child has special needs; or

g. any other reason deemed appropriate by the court.

3. The order of appointment must clearly set forth the terms of the appointment, including the reasons for and duration of the appointment, rights of access as provided under this paragraph and applicable terms of compensation.

B. Qualifications of Child's Attorney or Best Interests Attorney. The court may appoint as a child's attorney or best interests attorney only an individual who is qualified through training or experience in the type of proceeding in which the appointment is made, as determined by the court and according to any standards established by Arizona law or rule.

C. Qualifications of Court-Appointed Advisor. The court may appoint as court-appointed advisor for a child only a qualified individual or a non-profit or governmental organization of qualified individuals. To be qualified, an individual must have received training or have experience in the type of proceeding in which the appointment is made, according to any standards established by Arizona law or rule. An attorney appointed as court-appointed advisor may take only those actions that may be taken by a court-appointed advisor who is not an attorney.

D. Access to Child and Information Relating to Child.

1. Subject to subdivision 3 and any conditions imposed by the court that are required by law, rules of professional conduct, the child's needs, or the circumstances of the proceeding, the court shall issue an order of access at the time of an order of appointment, authorizing the child's attorney, best interests attorney, or court-appointed advisor to have immediate access to the child and any otherwise privileged or confidential information relating to the child.

2. The custodian of any relevant record relating to a child shall provide access to a person authorized by order issued pursuant to this rule to access the records.

3. A child's record that is privileged or confidential under law other than this rule may be released to a person appointed under this rule only in accordance with that law.

E. Participation in Proceeding by Child's Attorney, Best Interests Attorney, And Court-Appointed Advisor.

1. A child's attorney or best interests attorney shall participate in the conduct of the litigation to the same extent as an attorney for any party.

2. A child's attorney, best interests attorney, and court-appointed advisor may not engage in *ex parte* contact with the court except as authorized by law other than this rule.

3. A court-appointed advisor may not take any action that may be taken only by a licensed attorney, including making opening and closing statements, examining witnesses, and engaging in discovery other than as a witness.

4. The court shall ensure that any court-appointed advisor for a child has an opportunity to testify or submit a report setting forth:

a. the court-appointed advisor's recommendations regarding the best interests of the child; and

b. the ~~bases~~ basis for the court-appointed advisor's recommendations.

5. In a proceeding, a party, including a child's attorney or best interests attorney, may call any court-appointed advisor for the child as a witness for the purpose of cross-examination regarding the advisor's report without the advisor's being listed as a witness by a party.

6. An attorney appointed as child's attorney or best interests attorney may not:

a. be compelled to produce the attorney's work product developed during the appointment;

b. be required to disclose the source of information obtained as a result of the appointment;

c. submit a report into evidence; or

d. testify in court.

7. Subdivision 6 does not alter the duty of an attorney to report child abuse or neglect under applicable law.

F. Fees and Expenses in Custody Proceeding. The court may allocate fees and expenses between the parties as the court deems appropriate. ~~in accordance with all applicable Arizona law and rules.~~

G. Appointments from Juvenile Dependency Rosters. The court shall not appoint a best interests attorney, a child's attorney, or a court-appointed advisor from a state or county-funded juvenile dependency roster unless the court finds that a child may be the victim of child abuse or neglect as defined in A.R.S. § 8-201.

H. Minors and Incompetent Persons. Whenever a minor or incompetent person has a representative appointed by the court or authorized by Title 14, *Arizona Revised Statutes*, the representative may act on behalf of the minor or incompetent person to the extent allowed under Arizona law or the court's order of appointment. The court shall not appoint a guardian to act on behalf of the minor or incompetent person, except as provided by Title 14, *Arizona Revised Statutes*.

COMMITTEE COMMENT

The American Bar Association Standards of Practice for Lawyers Representing Children in Custody Cases, adopted August 2003, provides guidance to the court, counsel, and litigants about the appointment of attorneys for children. The Standards include suggestions about when and how an attorney should be appointed, and in which capacity, and detail what the attorney's responsibilities are to the court and the client.

A court-appointed advisor shall not function as an attorney but shall independently investigate the case and make recommendations to the court. The National Conference of Commissioners on Uniform State Laws 2005 draft of the Representation of Children in Abuse and Neglect and Custody Proceedings Act provides guidance to the court, court-appointed advisors and litigants about the appointment of court-appointed advisors, as well as their role and responsibilities.

Paragraph ~~G~~ H ~~of this rule~~ is based on Rule 17(g), *Arizona Rules of Civil Procedure*.

Rule 11. Presence of Children

The court may, in its discretion, exclude minor children from any proceeding if the presence of a minor child may not be in the child's best interest or may be disruptive or distracting to the proceeding. The presence of a minor child affected by a family law proceeding is generally not in the child's best interest and such child shall not be present during any proceeding involving said child, or the parents of said child, without prior permission of the court.

Rule 12. Court Interviews of Children

On motion of any party, or its own motion, the court may, in its discretion, conduct an *in camera* interview with a minor child who is the subject of a custody or parenting time dispute, to ascertain the child's wishes as to the child's custodian and as to parenting time. The interview

may be conducted at any stage of the proceeding and shall be recorded by a court reporter or any electronic medium that is retrievable in perceivable form. The record of the interview may be sealed, in whole or in part, based upon good cause and after considering the best interests of the child. The parties may stipulate that the record of the interview shall not be provided to the parties or that the interview may be conducted off the record.

COMMITTEE COMMENT

Arizona Revised *Statutes* § 25-405 allows for an *in camera* interview of a child to ascertain the child's wishes as to the child's custodian and as to parenting time. A record of the proceeding will be kept to ensure the integrity of the process, to allow for rebuttal information in appropriate cases, and to provide for appropriate appellate review. The definition of "record" is derived from A.R.S. § 25-1010(E).

Rule 13. Public Access to Proceedings and Records

A. Presumptively Open Family Court Proceedings. Family court proceedings are presumptively open to the public; however, to promote amicable settlement of the issues, to protect the best interests of a minor child, or to protect the parties from physical or emotional harm, the court may exclude the public pursuant to paragraph B.

B. Order to Close the Courtroom. Upon its own motion, or upon motion filed and served by an interested person not less than two (2) days before the proceeding, the court may enter an order closing the courtroom based upon finding made on the record that:

1. there exists a compelling interest in closure that outweighs the public interest in attending the proceeding;

2. there are no alternatives to closure that will protect the compelling interest; and

3. the closure ordered is no broader than necessary to protect the compelling interest.

C. Stipulation to Close the Courtroom. A stipulation to close the courtroom shall not alone constitute a justification for closure.

D. Access to Records. Records of family court proceedings shall be maintained and disclosed in accordance with Rule 123, *Rules of the Supreme Court,* and Rule 43 of these rules. Unless otherwise provided in Rule 123, *Rules of the Supreme Court,* the court may, upon a finding that the confidentiality or privacy interests of the parties, their minor children, or other person whose information appears of record outweighs the public interest in disclosure, make any record of a family court matter closed or confidential or otherwise limit access to such records.

COMMITTEE COMMENT

ARS § 25-407(D) provides: "If the court finds that to protect the child's welfare, the record of any interview, report investigation, or testimony in a custody proceeding should be kept secret, the court may then make an appropriate order sealing the record."

Rule 14. Sworn Written Verification; Unsworn Declarations Under Penalty of Perjury

A. Sworn Written Verification. A sworn written verification is required for: (1) an acceptance or waiver of service under Rule 40(F), (2) a stipulation or agreement that substantially changes the terms of a custody or parenting time order, unless entered into in open court or conciliation services, (3) an affidavit submitted pursuant to Rule 44(B)(1)(b), or (4) a consent decree submitted to the court under Rule 45.

B. Unsworn Declarations Under Penalty of Perjury. Except as provided in paragraph A, wherever, under these rules, or under any rule, regulation, order, or requirement made pursuant to these rules, any matter is required to be supported, evidenced, established, or proved by the sworn written declaration, verification, certificate, statement, oath, or affidavit of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may be supported, evidenced, established, or proved by the unsworn written declaration, certificate, verification, or statement, subscribed by such person as true under penalty of perjury, and dated, in substantially the following form:

> "I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)"

COMMITTEE COMMENT

This rule is based on Rule 80(i), *Arizona Rules of Civil Procedure*.

Rule 15. Affirmation in Lieu of Oath

Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

COMMITTEE COMMENT

This rule is based on Rule 43(b), *Arizona Rules of Civil Procedure.*

Rule 16. Interpreters

The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed as costs, in the discretion of the court.

COMMITTEE COMMENT

This rule is based on Rule 43(c), *Arizona Rules of Civil Procedure*.

Rule 17. Limitation on Examination of Witness; Exception

Only one attorney on each side shall conduct the examination of a witness until such examination is completed, except when the court grants permission for other attorneys to conduct the examination.

COMMITTEE COMMENT

This rule is based on Rule 43(d), *Arizona Rules of Civil Procedure*.

Rule 18. Preservation of ~~Court Reporters' Notes~~ Verbatim Recording of Court Proceedings

The official verbatim recording ~~and electronic recordings~~ of any court proceeding is an official record of the court. The original of such verbatim recording ~~notes~~ shall be kept by the person who recorded it, a court-designated custodian, or the clerk of the court in such place or places as shall be designated by the court. Unless the court specifies a different period for the retention of such verbatim recording, it shall be retained according to the records retention and disposition schedules and purge lists adopted by the Supreme Court.

COMMITTEE COMMENT

This rule is based on Rule 43(k), *Arizona Rules of Civil Procedure*, as amended in 2005.

Rule 19. Lost Records; Method of Supplying, Substitution of Copies; Hearing if Corrections Denied

When the records and papers of an action or proceeding, or part thereof, are lost or destroyed, they may be supplied and copies substituted in accordance with Rule 80(h), *Arizona Rules of Civil Procedure*.

COMMITTEE COMMENT

To facilitate uniformity in record keeping, Rule 80(h), *Arizona Rules of Civil Procedure*, is adopted in its entirety.

Rule 20. Electronic Filing

The court may permit electronic filing of a document in any action or proceeding in a manner authorized and prescribed by Rule 124, *Rules of the Supreme Court of Arizona*, unless these rules, a court order, or other legal authority expressly prohibit electronic filing.

COMMITTEE COMMENT

Rule 124, *Rules of the Supreme Court of Arizona*, provides that: "The presiding judge of the Superior Court in each county may permit by appropriate court rule the electronic filing of documents in the Superior Court and Justice Courts in each county."

Rule 21. Local Rules of Superior Court

With the approval of a majority of the judges of the county, the presiding judge may supplement these rules by local rules, not inconsistent with the provisions of these rules, which shall be promulgated and published upon approval of the Chief Justice of the Supreme Court.

COMMITTEE COMMENT

To facilitate uniformity, Rule 83, *Arizona Rules of Civil Procedure*, is adopted in its entirety.

Rule 22. ~~[Reserved]~~ Conduct of Proceedings.

1. The court may impose reasonable time limits on all proceedings or portions thereof and limit the time to the scheduled time. Any party may request additional time by filing a motion within a reasonable time or as directed by the court.

2. All proceedings shall be conducted in an orderly, courteous, and dignified manner. Arguments and remarks shall be addressed to the court.

COMMITTEE COMMENT

This rule is based on Rule 80(a), *Arizona Rules of Civil Procedure*.

II. PLEADINGS AND MOTIONS

Rule 23. Commencement of Action

A family law action is commenced by filing a petition with the clerk of the court. During the pendency of an action, parties who are not represented by counsel shall keep the court apprised of their current mailing addresses. Each party shall notify the court within ten (10) days of any changes in the party's mailing address.

COMMITTEE COMMENT

This rule is based on Rule 3, *Arizona Rules of Civil Procedure*.

Rule 24. Pleadings Allowed

A. Petition. A party shall commence the following actions by filing a verified petition with the clerk of the superior court: Annulment (A.R.S. § 25-301), Dissolution (A.R.S. § 25-312), Legal Separation (A.R.S. § 25-313), Child Custody or Visitation by Nonparent (A.R.S. § 25-415), Grandparent or Great-grandparent Visitation (A.R.S. § 25-409), Dissolution of Covenant Marriage (A.R.S. § 25-903), Legal Separation in Covenant Marriage (A.R.S. § 25-904), ~~Protective Order (A.R.S. § 13-3602),~~ Paternity or Maternity (A.R.S. § 25-806), establish, enforce, register, or modify custody or parenting time (A.R.S. §§ 25-403, -411, ~~and~~ -803(C))~~,~~ and -1055), or to establish, enforce, register or modify support (A.R.S. §§ 25-320, ~~and 25~~-503, -1031 and -1033).

B. Notice of Filing a Foreign Judgment. A party shall file a foreign judgment or decree pertaining to the disposition of marital property or debt pursuant to A.R.S. §§ 12-1701 to 1708. A party shall commence an action for disposition of property (A.R.S. § 25-318(A)) or maintenance (A.R.S. § 25- 319(A)) pursuant to the decree from a foreign court by filing the foreign judgment pursuant to A.R.S. §§ 12-1701 to 1708. Once the party has filed the foreign judgment, the party may file a petition for order to appear specifying the relief sought. This paragraph is not intended to create any new substantive right.

C. Voluntary Acknowledgment of Paternity. A party seeking to acknowledge paternity voluntarily may do so by filing with the clerk of the superior court any of the documents listed in A.R.S. § 25-812.

D. Appearance of Parties and Child; Warrant to Take Physical Custody of a Child. A party may apply for issuance of an order for appearance of parties and child or a warrant to take physical custody of a child, pursuant to A.R.S. §§ 25-1040 and 25-1061.

E. Response. Response is defined in Rule 3(B)(7).

F. Other Pleadings. Other pleadings may include a third-party petition and response and such other pre-judgment/pre-decree or post-judgment/post-decree pleadings as otherwise provided for in these rules.

COMMITTEE COMMENT

The procedures set forth in paragraph D are based on the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act and replace habeas corpus procedures that may previously have been used in some jurisdictions.

Rule 25. Family Law Cover Sheet

By administrative order of the presiding judge or local rule, a county may require that, along with all original filings, the party shall include a family law cover sheet in the form and containing the information designated by the presiding judge or the presiding judge's designee.

Rule 26. Additional Filings

A. Preliminary Injunction and Summons with Petition for Annulment, Dissolution, Legal Separation, Dissolution of Covenant Marriage or Legal Separation in Covenant Marriage. Along with the original petition for annulment, dissolution, legal separation, dissolution of covenant marriage or legal separation in covenant marriage, the party shall present to the clerk of the court a preliminary injunction for issuance pursuant to A.R.S. § 25- 315(A), a summons and a copy of the summons so that the clerk of the court may issue the summons and the copy of the summons for service on the opposing party.

B. Summons with Original Petition for Child Custody by Parent, Paternity or Maternity. Along with the original petition for child custody by parent, paternity or maternity, the party shall present to the clerk of the court a summons and a copy of the summons so that the clerk of the court may issue the summons and the copy of the summons for service on the opposing party.

C. Order to Appear. In all actions other than those listed in paragraphs A and B, ~~A~~and Rule 91(D), along with the original petition seeking relief ~~for other than those actions listed in paragraphs A and B,~~ the party shall also present to the court an original and copy of an order to appear for the court to schedule a hearing on the petition.

D. Notices, Forms and Orders. A party filing a petition shall present to the clerk of the court for issuance~~,~~ of all notices, forms and orders required by statute, these rules, local rule or administrative order to be served on the opposing party.

Rule 27. Service on the Opposing Party or Additional Parties

A. Summons, Preliminary Injunction and Petition. In an action for annulment, dissolution, legal separation, dissolution of covenant marriage or legal separation in covenant marriage, the petitioner shall serve upon the opposing party a copy of the petition, a copy of the summons, the preliminary injunction issued pursuant to A.R.S. § 25-315(A)~~,~~ and ~~the~~ any notices, forms~~,~~ and orders required under Rule 26(D).

B. Summons and Petition. In an action for paternity or maternity~~,~~ or child custody by a ~~non~~parent~~, or grandparent or great-grandparent visitation~~, the petitioner shall serve upon all parties entitled to service a copy of the petition and ~~a copy of~~ the summons~~,~~ and ~~the~~ any notices, forms~~,~~ and orders required under Rule 26(D).

C. Order to Appear and Petition. In all actions other than those listed in paragraphs A and B, the petitioner shall serve upon all parties entitled to service a copy of the petition, order to appear issued by the court and any notices, forms and orders required under Rule 26(D), at least 20 days prior to the scheduled hearing, unless otherwise ordered by the court. Service shall be pursuant to Rule 40, 41 or 42, as applicable.

Rule 28. Mandatory Responsive Filings

The opposing party in an action for annulment, dissolution, legal separation, child custody by parent, dissolution of covenant marriage, legal separation in covenant marriage, paternity or maternity who has been served with a petition and summons shall respond by filing a response to the petition. In the event the opposing party in one of these proceedings does not file a response, the party who filed the action will have the right to file for a default and receive a default judgment under Rule 44. All mandatory responsive filings shall be verified.

Rule 29. General Rules of Pleading

A. Claims for Relief. A pleading which sets forth a claim for relief shall contain: (1) a short and plain statement of the grounds upon which the court's jurisdiction depends unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it; (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment or decree for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

B. Form of Response; Form of Denials. A party shall state in short and plain terms the party's response to each claim made and shall admit or deny the statements of fact upon which the other party relies. The response shall set forth any statement of fact on which the responding party relies which differs from the factual statements of the other party. The response may include any other claim for relief not referenced in the petition but which is permitted under these rules. If a party is without knowledge or information sufficient to form a belief as to the truth of a statement of fact, the party shall so state and this has the effect of a denial.

C. Effect of a Response. Except as otherwise provided in Rule 32(F), the filing of a response has the effect of placing at issue all matters pled that are not specifically admitted.

D. Pleading to be Concise and Direct; Consistency. Each statement of fact of a pleading shall be simple, concise and direct. No technical forms of pleading or motions are required. A party may set forth two or more statements of a claim or defense alternatively or hypothetically. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the

party has regardless of consistency and whether based on legal or equitable grounds or both. All statements shall be made subject to the obligations set forth in Rule 31(A).

E. Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

COMMITTEE COMMENT

This rule is based on Rule 8, *Arizona Rules of Civil Procedure*.

Rule 30. Form of Pleading

A. Caption; Names of Parties. Every pleading shall satisfy any statutory requirements and contain a caption setting forth the name of the court, the names of the parties, the title of the action, the file number and the type of pleading. A party's designation as petitioner or respondent shall continue in all future proceedings. When the name of the respondent is unknown to the petitioner, the respondent may be designated in the pleadings or proceeding by any name. When the respondent's true name is discovered, the pleading or proceeding may be amended accordingly.

B. Paragraphs; Separate Statements. All statements of claim or factual statements shall be made in numbered paragraphs, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings.

C. Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in a motion. A copy of a written instrument which is an exhibit to a pleading is a part thereof for all purposes.

D. Method of Preparation and Filing

1. All pleadings and other papers filed in any action or proceeding shall be on white, opaque, unglazed paper measuring 8-1/2 inches x 11 inches with a margin at the top of the first page of not less than 2 inches; a margin at the top of each subsequent page of not less than 1-1/2 inches; a left-hand margin of not less than 1 inch; a right-hand margin of not less than 1/2 inch; and a margin at the bottom of the page of not less than 1/2 inch.

2. Notwithstanding the foregoing, exhibits, attachments to pleadings or pleadings from jurisdictions other than the State of Arizona that are larger than the specified size shall be folded to the specified size or folded and fastened to pages of the specified size. Exhibits or attachments to pleadings that are smaller than the specified size shall be fastened to pages of the specified size. An exhibit, attachment to a pleading or a pleading from a jurisdiction other than the State of Arizona not in compliance with the foregoing provisions may be filed only if it appears that compliance is not reasonably practicable.

3. All pleadings and other papers filed shall have the pages numbered and shall state the number of the action, the title of the court and action, the nature of the paper filed and the name, address and telephone number of the attorney or party if not represented by counsel. The attorney shall also provide the attorney's Arizona Bar number, and a certified legal document preparer shall provide the document preparer's certification number. Only ~~O~~originals ~~only~~ shall be filed, except ~~that where~~ when it is necessary to file more than one copy of a pleading or other paper. All pleadings and other papers filed, other than standardized forms, shall be clearly printed on one side of the page only and shall be double-spaced or one and one-half spaced except for quotations and footnotes, which may be single spaced. Standardized forms may be single spaced except that those requiring the signature of a judge or commissioner shall be double-spaced or one and one-half spaced. Text of standardized forms may continue from the front to the reverse side of a page, but any such continuation of text to the reverse side of the page shall be printed in tumbled fashion and shall cover no more than the top half of the tumbled page. All standardized forms shall be on paper of sufficient quality and weight to assure legibility on both sides without bleed-through upon duplication or microfilming.

4. Forms from the Superior Court's Self-Service Center or the Supreme Court's website or the superior court's approved electronic forms meet the requirements of this rule.

5. The court may, on its own motion or on request of any party, waive any of the foregoing requirements or provisions.

COMMITTEE COMMENT

This rule is based on Rule 10, *Arizona Rules of Civil Procedure*.

Rule 31. Signing of Pleadings

A. Signing of Pleadings, Motions and Other Papers; Sanctions. Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party or both, an appropriate sanction, which may include an order to pay

to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee.

B. Verification of Pleading Generally. When in a family law action a pleading is required to be verified by the affidavit of the party or when in a family law action an affidavit is required or permitted to be filed, the pleading may be verified or the affidavit made by the party or a person acquainted with the facts.

COMMITTEE COMMENT

This rule is based on Rule 11, *Arizona Rules of Civil Procedure*.

Rule 32. Defenses and Objections; When and How Presented; By Pleading or Motion; Motion for Judgment on Pleadings

A. When Presented.

1. A respondent shall serve and file a response within twenty (20) days after the service of the summons and petition upon the respondent except as otherwise provided in Rule 42(J).

2. Unless a different time is fixed by court order, the service of a motion permitted under this rule alters these periods of time; if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten (10) days after notice of the court's action.

B. How Presented; Motion to Dismiss. Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the response if one is required except that the following defenses may at the option of the pleader be made by motion:

1. lack of jurisdiction over the subject matter;

2. lack of jurisdiction over the person;

3. improper venue;

4. insufficiency of process;

5. insufficiency of service of process; or

6. failure to state a claim upon which relief can be granted.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. A defense of improper venue

may be made only if the action cannot be or could not have been transferred to the proper county pursuant to A.R.S. § 12-404. If, on a motion asserting the defense to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 79, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 79.

C. Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 79, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 79.

D. Preliminary Hearings. On application of any party, the defenses specifically enumerated as 1 through 6 in paragraph B ~~of this rule~~, whether made in a pleading or by motion, and the motion for judgment mentioned in paragraph C ~~of this rule~~ shall be heard and determined before trial unless the court orders that the hearing and determination thereof be deferred until the trial.

E. Motion to Strike. Upon motion made by a party before responding to a pleading or if no responsive pleading is permitted by these rules, upon motion made by a party within twenty (20) days after service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from a pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

F. Waiver or Preservation of Certain Defenses. A party waives all defenses and objections not presented either by motion or in that party's answer or response except:

1. a defense of lack of jurisdiction over the person, improper venue, insufficiency of process or insufficiency of service of process is waived unless it is made by motion under this rule or included in a responsive pleading or an amendment thereof permitted by Rule 34(A); and

2. a defense of failure to state a claim upon which relief can be granted and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rules 24 and 28, or by motion for judgment on the pleadings or at the trial on the merits.

G. Subject Matter Jurisdiction. Whenever it appears to the satisfaction of the court that it lacks subject matter jurisdiction, the court shall dismiss the action.

COMMITTEE COMMENT

This rule is based on Rule 12, *Arizona Rules of Civil Procedure.*

Rule 33. Counterclaims; Third Party Practice

A. A party to a family law case may file a statutory claim against another party or against a third party arising out of or related to the subject matter of the action by the filing of a separate claim, counter-claim or third party petition, as appropriate, without prior leave of court provided that said filing will not unduly delay or prejudice the adjudication of the rights of other parties to the action. Service of any such claim, counter-claim or third party petition shall be as provided by Rule 40, 41 or 42, as applicable.

B. A response to any claim, counter-claim or third party petition, shall be filed within the time and in the manner required by these rules.

C. Upon timely application, the court may join additional parties necessary for the exercise of its authority.

D. Upon timely application, the court may allow a third party to intervene in an action if necessary for the exercise of the court's authority, including for the purpose of interpleader. The court may, in its discretion, discharge the interpleader from liability to the parties upon such terms as the court may direct.

E. Misjoinder or non-joinder of parties is not grounds for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on the court's own motion at any stage of the action and on such terms as are just. The court may sever any claim against a party, proceed separately with that claim, order separate trials or make such other orders necessary to prevent delay or prejudice.

F. Except as otherwise provided herein or by law, a party desiring joinder of another person or a person desiring to intervene shall serve a motion to join or a motion to intervene upon the parties as provided in Rule 41 or 42, as applicable. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim, defense or purpose for which joinder or intervention is sought.

G. If the motion to join or intervene is granted, the petitioner and respondent shall be allowed a reasonable time, not exceeding twenty (20) days, in which to respond to the pleading of the intervener or party joined.

H. In the event the court authorizes a party to file a claim or otherwise consolidates a civil cause of action into a family law case that entitles any party to a jury trial as a matter of right the *Arizona Rules of Civil Procedure* shall thereafter govern all further proceedings in the case until the jury verdict has been rendered and judgment entered on those issues. Thereafter, the *Arizona Rules of Family Law Procedure* shall apply.

COMMITTEE COMMENT

This rule is based on Rules 13 and 14, *Arizona Rules of Civil Procedure*. Note that cross-claims have been eliminated from family law practice.

Rule 34. Amended and Supplemental Pleadings

A. Amendments.

1. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within twenty (20) days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party. Leave to amend shall be freely given when justice requires.

2. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

B. Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure ~~so to~~ to so amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues raised in the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

C. Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party to be brought in by amendment, plus the period provided by Rule 40(I) for service of the summons and petition; the party to be brought in by amendment (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

D. Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time ~~therefor~~ thereof.

COMMITTEE COMMENT

This rule is based on Rule 15, *Arizona Rules of Civil Procedure*.

Rule 35. Family Law Motion Practice

A. Formal Requirements; Time Periods.

1. The grounds for any motion shall be stated with particularity~~,~~ and shall set forth the relief or order which is sought. All written motions made before or after trial shall be accompanied by a memorandum indicating, at a minimum, the precise legal points, statutes and authorities relied ~~on,~~ upon and citing the specific portions or pages thereof.

2. All motions shall be served on the opposing parties. Unless otherwise ordered by the court, affidavits supporting the motion shall be filed and served together with the motion.

3. Any party opposing the motion shall file any answering memorandum within ten (10) days thereafter. An answering memorandum shall be titled "Response to _____ (name of motion)."

4. Within five (5) days after service of the Response, the moving party may serve and file a memorandum in reply titled "Reply to _____ (name of motion)". The reply shall be directed only to matters raised in the response.

5. Affidavits submitted in support of any response shall be filed and served together with the response unless the court permits them to be filed and served at some other time. In its discretion, the trial court may waive these requirements as to motions made in open court.

6. The time and manner of service of every motion, response and reply shall be noted on all such documents and shall be governed by Rule 43. If the precise manner in which service has actually been made is not noted on any such filing, it will be conclusively presumed that the filing was served by mail, and the provisions of Rule 4~~6~~ (D) shall apply. This conclusive presumption shall only apply if service in some form has actually been made. The time periods specified in this paragraph shall not apply where specific times for motions, affidavits or memoranda are otherwise provided by statute or order of court.

7. The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by this rule, and all such motions and other papers shall be signed in accordance with Rule 31.

B. Effect of Non-Compliance. If a motion does not conform in all substantial respects with the requirements of this rule, or if the opposing party does not serve and file the required response or if counsel for any moving or opposing party fails to appear at the time and place assigned for oral argument, such non-compliance may be deemed a consent to the denial or granting of the motion, and the court may dispose of the motion summarily.

C. Oral Argument.

1. Any party may request or the court may order on its own motion a time and a place for oral argument on any motion. The setting of oral argument is at the discretion of the court.

2. To expedite its business, the court may make provision by order for the submission and determination of motions, without oral hearing, upon brief written statements of reasons in support and opposition.

3. If granted by the court, oral argument may be limited to a prescribed number of minutes~~,~~ which ~~time~~ shall not be exceeded without special permission in advance.

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 8~~6~~5(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 fifteen (15) day after entry of the judgment or order.

COMMITTEE COMMENT

This rule is based on Rule 7.1, *Arizona Rules of Civil Procedure*.

Rule 36. Real Party in Interest

Every action shall be prosecuted in the name of the real party in interest. A party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the state so provides, an action for the use or benefit of another shall be brought in the name of the State of Arizona. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

COMMITTEE COMMENT

This rule is based on Rule 17, *Arizona Rules of Civil Procedure*.

Rule 37. Substitution of Parties

A. Death.

1. If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 43 and upon

persons not parties in the manner provided in Rule 40, 41, or 42, as applicable, for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

2. In the event of the death of one or more of the petitioners or of one or more of the respondents in an action in which the right sought to be enforced survives only to the surviving petitioners or only against the surviving respondents, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

B. Incompetence. If a party becomes incompetent, the court, upon motion served as provided in paragraph A, may allow the action to be continued by or against the party's representative.

C. Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in paragraph A.

COMMITTEE COMMENT

This rule is based on Rule 25, *Arizona Rules of Civil Procedure*.

Rule 38. ~~Process on Behalf of and Against Persons Not Parties~~ [Reserved]

~~When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party, and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.~~

~~COMMITTEE COMMENT~~

~~This rule is adapted from 71, Arizona Rules of Civil Procedure.~~

Rule 39. Proof of Authority by Attorney for Respondent Not Personally Served

In family law actions, an attorney appearing for a respondent who has not been personally served shall file a responsive pleading or a notice of appearance.

COMMITTEE COMMENT

This rule is adapted from 80(f), *Arizona Rules of Civil Procedure*.

IV. SERVICE OF PROCESS

Rule 40. Process

A. Summons; Issuance. When the petition or any other pleading which requires service of a summons is filed, the clerk shall endorse thereon the day and hour on which it was filed and the number of the action, and shall forthwith issue a summons. The party filing the pleading may present a summons to the clerk for signature and seal. If in proper form, the clerk shall sign and seal the summons and issue it to the party for service or for delivery to a person authorized to serve it under paragraph C. A summons, or a copy of the summons if addressed to multiple persons, shall be issued for each person to be served.

B. Summons; Form; Replacement Summons. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the person to be served, state the name and address of the attorney, if any, for the party on whose behalf service is being made, and otherwise that party's address. The summons shall state the time within which these rules require the person being served to appear and defend, and shall notify that person that in case of a failure to do so judgment by default will be rendered against that person for the relief demanded in the pleading served. In an action for annulment, dissolution of marriage, or legal separation, the summons shall also contain a statement that either spouse, or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting conciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issue involved. A summons, or a copy of the summons in the case of multiple persons to be served, shall be served together with a copy of the pleading to be served. If a summons is returned without being served, or if it has been lost, the clerk may upon request issue a replacement summons in the same form as the original. A replacement summons shall be issued and served within the time prescribed by paragraph I ~~of this rule~~. The summons shall state that "requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least three (3) working days in advance of a scheduled court proceeding."

C. Process; By Whom Served. Service of process shall be by a sheriff, a sheriff's deputy, a private process server registered with the clerk of the court pursuant to paragraph D, or any other person specially appointed by the court, except that a subpoena may be served as provided in Rule 52. Service of process may also be made by a party or that party's attorney where expressly authorized by these rules. A private process server or specially appointed person shall be not less than 21 years of age and shall not be a party, an attorney, or the employee of an attorney in the action whose process is being served. Special appointments to serve process shall be requested by motion to the presiding judge, and the court's ruling shall be recorded by minute entry. Special appointments shall be granted freely, are valid only for the cause specified in the motion, and do not constitute an appointment as a registered private process server.

D. State-wide Registration of Private Process Servers. A person who files with the clerk of the court an application approved by the Supreme Court, stating that the applicant has been a bona fide resident of the State of Arizona for at least one year immediately preceding the

application and that the applicant will well and faithfully serve process in accordance with the law, and who otherwise complies with the procedures set forth by the Supreme Court in its Administrative Order regarding this subsection, shall, upon approval of the court or presiding judge thereof, in the county where the application is filed, be registered with the clerk as a private process server until such approval is withdrawn by the court in its discretion. The clerk shall maintain a register for this purpose. Such private process server shall be entitled to serve in such capacity for any court of the state anywhere within the State.

E. Service of Summons in Title IV-D Cases. Following registration in compliance with paragraph D, a Field Locate Investigator employed by the Department of Economic Security's Office of Special Investigations may complete service in the manner set forth in Rule 41(C) in any action initiated by the State for the determination of paternity or the establishment, modification, or enforcement of an order of support.

F. Service; Acceptance or Waiver; Voluntary Appearance. The person to whom a summons or other process is directed may accept service, or waive issuance or service thereof in writing, dated and signed by that person, and subscribed and sworn to (or affirmed to) before a notary public, and the acceptance or waiver shall be filed with the clerk. Instead of notarization, the person may sign the acceptance or waiver in the presence of the clerk after verification of the person's identity by the clerk. If the person is represented by counsel, counsel may sign the acceptance or waiver. A person upon whom service is required may, in person or by attorney or by an authorized agent, enter an appearance in open court, and the appearance shall be noted by the clerk upon the docket and entered in the minutes. Such waiver, acceptance or appearance shall have the same force and effect as if a summons had been issued and served. The filing of a pleading responsive to a pleading allowed under Rule 24 shall constitute an appearance.

G. Return of Service. If service is not accepted or waived, then the person effecting service shall make proof thereof to the court. When the process is served by a sheriff or a sheriff's deputy, the return shall be officially endorsed on or attached thereto and returned to the court promptly. If served by a person other than the sheriff or a deputy sheriff, return and proof of service shall be made promptly by affidavit thereof. Each such affidavit of a registered private process server shall include clear reference to the county where that private process server is registered. When the summons is served by publication, the return of the person making such service shall be made in the manner specified in Rules 41 and 42. Proof of service in a place not within any judicial district of the United States shall, if effected under Rule 42(F)(1), be made pursuant to the applicable treaty or convention. If effected under Rule 42(F)(2) or (F)(3), proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court. In any event, the return shall be made within the time during which the person served must respond to process. Failure to make proof of service does not affect the validity thereof.

H. Amendment of Process or Amendment of Proof of Service. At any time, in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

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).

COMMITTEE COMMENT

This rule is based on Rule 4, *Arizona Rules of Civil Procedure*.

Rule 41. Service of Process within Arizona

A. Territorial Limits of Effective Service. All process may be served anywhere within the territorial limits of the state.

B. Summons; Service with Petition. The summons, pleading and other documents being served shall be served together. The party procuring service is responsible for service of a summons, the pleading and other documents being served within the time allowed under Rule 40(I) and shall furnish the person effecting service with the necessary copies of the pleading to be served.

C. Service of Summons upon Individuals.

1. *Personal Service.* Service upon an individual from whom a waiver has not been obtained and filed, other than those specified in paragraphs D, E, and F, shall be effected by delivering a copy of the summons, pleading and other documents being served to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons, pleading and other documents being served to an agent authorized by appointment or by law to receive service of process, except as otherwise provided in subdivision C(2) ~~of this rule~~.

2. *Service by Mail or National Courier Service; Return.* When the location of a party is within the state, service may be made by depositing, with delivery charges prepaid, the summons and a copy of the pleading and other documents being served with the United States Postal Service or any other national courier service that provides delivery and signature confirmation or certified mail, signed return receipt, to be sent to the person to be served. Service under this rule and the return or confirmation of service may be made by the party procuring service or by that party's attorney. Service in this manner is only effective if the return receipt or signature confirmation is signed by the party to be served. Upon receiving from the U.S. Postal Service or other national courier service the signed return receipt, or a copy of the signature confirmation and cash register receipt or package label of the person being served, the serving party shall file an affidavit with the court stating:

a. that the summons and a copy of the pleading and other document being served were dispatched to the party being served;

b. that such papers were in fact received by the party as evidenced by the receipt, or copy of the signature confirmation containing the signature of the party served and cash register receipt or package label, a copy of which shall be attached to the affidavit; and

c. the date of receipt by the party being served and the date of the return of the receipt or signature confirmation to the sender.

This affidavit shall be *prima facie* evidence of personal service of the summons, the pleading and other documents to be served. Service shall be deemed complete and time shall begin to run for the purposes of ~~paragraph J of this rule~~ Rule 32(A) from the date of receipt by the party being served, provided that no default may be had on such service until the required affidavit has been filed.

D. Service of Summons upon Minors. Service upon a minor under the age of sixteen years shall be effected by service in the manner set forth in paragraph C ~~of this rule~~ upon the minor and upon the minor's father, mother or guardian, within this state, or if none is found therein, then upon any person having the care and control of such minor, or with whom the minor resides.

E. Service of Summons upon a Minor with Guardian or Conservator. Service upon a minor for whom a guardian or conservator has been appointed in this state shall be effected by service in the manner set forth in paragraph C ~~of this rule~~ upon such guardian or conservator and minor.

F. Service of Summons upon Incompetent Persons. Service upon a person who has been judicially declared to be insane, gravely disabled, incapacitated or mentally incompetent to manage that person's property and for whom a guardian or conservator has been appointed in this state shall be effected by service in the manner set forth in paragraph C ~~of this rule~~ upon such person and also upon that person's guardian or conservator, or if no guardian or conservator has been appointed, upon such person as the court designates.

G. Service of Summons upon the State. Service upon the state shall be ~~e~~affected by acceptance or waiver of service or by delivering to the attorney general or any person designated by the attorney general a copy of the summons and of the pleading in the manner set forth in Rule 41(C). Alternatively, in counties that by administrative order of the presiding judge have authorized electronic service upon the state in Title IV-D cases as provided in this rule, any person required under these rules to personally serve documents upon the state may serve the same by concurrently filing with the documents to be served a written Notice of State Interest that: 1) requests electronic service of the documents upon the state under this rule and the administrative order; 2) separately lists the title or description of each document to be served; and 3) indicates the State has or may have a right to be served with the documents. The clerk shall promptly file, scan and electronically transmit true copies of the documents and the Notice of State Interest to the electronic address that the state designates in response the administrative

order implementing the procedure, and service shall be deemed complete upon the clerk filing a Proof of Service By Electronic Transmittal verifying the documents and Notice of State Interest were transmitted and received by the state.

H. Service of Summons upon a County, Municipal Corporation or Other Governmental Subdivision. Service upon a county or a municipal corporation or other governmental subdivision of the state subject to suit, and from which a waiver has not been obtained and filed, shall be effected by delivering a copy of the summons and of the pleading to the chief executive officer, the secretary, clerk, or recording officer thereof.

I. Service of Summons upon Other Governmental Entities. Service upon any governmental entity not listed above shall be effected by serving the person, officer, group or body responsible for the administration of that entity or by serving the appropriate legal officer, if any, representing the entity. Service upon any person who is a member of the "group" or "body" responsible for the administration of the entity shall be sufficient.

J. Service of Summons upon Corporations, Partnerships or Other Unincorporated Associations. Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit in a common name, and from which a waiver has not been obtained and filed, shall be effected by delivering a copy of the summons and of the pleading to a partner, an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party on whose behalf the agent accepted or received service.

K. Service of Summons Upon a Domestic Corporation If Authorized Officer or Agent Not Found Within the State. When a domestic corporation does not have an officer or agent in this state upon which legal service of process can be made, service upon such domestic corporation shall be effected by depositing two (2) copies of the summons and of the pleading being served in the office of the Corporation Commission, which shall be deemed personal service on such corporation. The return of the sheriff of the county in which the action or proceeding is brought that after diligent search or inquiry the sheriff has been unable to find any officer or agent of such corporation upon whom process may be served, shall be *prima facie* evidence that the corporation does not have such an officer or agent in this state. The Corporation Commission shall file one of the copies in its office and immediately mail the other copy, postage prepaid, to the office of the corporation, or to the president, secretary or any director or officer of such corporation as appears or is ascertained by the Corporation Commission from the articles of incorporation or other papers on file in its office, or otherwise.

L. Alternative or Substituted Service. If service by one of the means set forth in the preceding paragraphs of this rule proves impracticable, then service may be accomplished in such manner, other than by publication, as the court, upon motion and without notice, may direct. Whenever the court allows an alternative or substitute form of service pursuant to this subpart, reasonable efforts shall be undertaken by the party making service to assure that actual notice of the commencement of the action is provided to the person to be served and, in any event, the summons and the pleading to be served, as well as any order of the court authorizing an alternative method of service, shall be mailed to the last known business or residence address of

the person to be served. Service by publication may be employed only under the circumstances, and in accordance with the procedures, specified in paragraph M ~~of this rule~~ and Rule 42(D).

M. Service by Publication; Return. Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance, division of marital property, or any other issue requiring personal jurisdiction over a party. In actions involving dissolution of a marriage, custody, or any other issue not requiring personal jurisdiction over a party, and where the person to be served is one whose residence is unknown to the party seeking service but whose last known residence address was within the state, or has avoided service of process, and service by publication is the best means practicable under the circumstances for providing notice of the institution of the action, then service may be made by publication in accordance with the requirements of this subpart. Such service shall be made by publication of the summons, and of a statement as to the manner in which a copy of the pleading being served may be obtained, at least once a week for four successive weeks (1) in a newspaper published in the county where the action is pending, and (2) in a newspaper published in the county of the last known residence of the person to be served, if different from the county where the action is pending. If no newspaper is published in any such county, then the required publications shall be made in a newspaper published in an adjoining county. The service shall be complete thirty days after the first publication. When the residence of the person to be served is known, the party or officer making service shall also, on or before the date of the first publication, mail the summons and a copy of the pleading and other documents being served, postage prepaid, to that person at that person's place of residence. Service by publication and the return thereof may be made by the party procuring service or that party's attorney in the same manner as though made by an officer. The party or officer making service shall file an affidavit showing the manner and dates of the publication and mailing, and the circumstances warranting the utilization of the procedure authorized by this subpart, which shall be *prima facie* evidence of compliance herewith. A printed copy of the publication shall accompany the affidavit. If the residence of the party being served is unknown, and for that reason no mailing was made, the affidavit shall so state.

COMMITTEE COMMENT

This rule is based on Rule 4.1, *Arizona Rules of Civil Procedure*. Rules 41(M) and 42(D) are intended to require personal service prior to the court adjudicating issues of paternity, child support, spousal maintenance, division of marital property or any other issue that does require personal jurisdiction over the parties. *Taylor v. Jarrett*, 191 Ariz. 550, 959 F. 2d 807 (App. 1998). Service by publication is sufficient for the court to dissolve a marriage, enter custody orders and resolve any other *in rem* or *quasi in rem* issue that does not require personal jurisdiction. This rule does not follow the holding in *Master Financial, Inc. v. Woodburn*, 208 Ariz. 70, 90 P.3d 1236 (App. 2004), applicable to Rule 4.1, *Arizona Rules of Civil Procedure*.

Rule 42. Service of Process Outside of State

A. Extraterritorial Jurisdiction; Personal Service Out of State. A court of this state may exercise personal jurisdiction over parties, whether found within or outside the state, to the maximum extent permitted by the constitution of this state and the Constitution of the United

States. Service upon any such party located outside the state may be made as provided in this rule and when so made shall be of the same effect as personal service within the state.

B. Direct Service. Service of process may be made outside the state but within the United States in the same manner provided in Rule 41(C) through (K) by a person authorized to serve process under the law of the state where such service is made. Such service shall be complete when made, and time for purposes of paragraph J ~~of this rule~~ shall begin to run at that time, provided that before any default may be had on such service, there shall be filed an affidavit of service showing the circumstances warranting the utilization of this procedure and attaching an affidavit of the process server showing the facts and circumstances of the service.

C. Service by Mail or National Courier Service; Return. When the location of a party outside the state is known, service may be made by depositing, with delivery charges prepaid, the summons and a copy of the pleading and other documents being served with the United States Postal Service or any other national courier service that provides delivery and signature confirmation or certified mail, signed return receipt, to be sent to the person to be served. Service under this rule and the return or confirmation of service may be made by the party procuring service or by that party's attorney. Service in this manner is only effective if the return receipt or signature confirmation is signed by the party to be served. Upon receiving from the U.S. Postal Service or other national courier service the signed return receipt, or a copy of the signature confirmation and cash register receipt or package label of the person being served, the serving party shall file an affidavit with the court stating:

1. that the party being served is known to be located outside the state;

2. that the summons and a copy of the pleading and other document being served were dispatched to the party being served;

3. that such papers were in fact received by the party as evidenced by the receipt or copy of the signature confirmation and cash register receipt or package label, a copy of which shall be attached to the affidavit; and

4. the date of receipt by the party being served and the date of the return of the receipt or signature confirmation to the sender.

This affidavit shall be *prima facie* evidence of personal service of the summons, the pleading and other documents to be served. Service shall be deemed complete and time shall begin to run for the purposes of paragraph J ~~of this rule~~ from the date of receipt by the party being served, provided that no default may be had on such service until the required affidavit has been filed.

D. Service by Publication; Return. Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance, division of marital property, or any other issue requiring personal jurisdiction over a party. In actions involving dissolution of a marriage, custody or any other issue not requiring personal jurisdiction over a party, and where the person to be served is one whose present residence is unknown but whose last known residence was outside the state or has avoided service of process,

and service by publication is the best means practicable under the circumstances for providing notice of institution of the action, then service may be made by publication in accordance with the requirements of this subpart. Such service shall be made by publication of the summons and of a statement as to the manner in which a copy of the pleading and other documents being served may be obtained at least once per week for four successive weeks in a newspaper published in the county where the action is pending. If no newspaper is published in any such county, then the required publications shall be made in a newspaper published in an adjoining county. The service shall be complete thirty days after the first publication. When the residence of the person to be served is known, the party or officer making service shall also, on or before the date of the first publication, mail the summons, a copy of the pleading and other documents being served, postage prepaid, directed to that person at that person's place of residence.

Service by publication and the return thereof may be made by the party procuring service or that party's attorney in the same manner as though made by an officer. The party or officer making service shall file an affidavit showing the manner and dates of publication and mailing and the circumstances warranting utilization of the procedure authorized by this subpart, which shall be prima facie evidence of compliance herewith. A printed copy of the publication shall accompany the affidavit. If the residence of the person to be served is unknown, and for that reason no mailing was made, the affidavit shall so state.

E. Service of Summons Upon Corporations, Partnerships or Unincorporated Associations Located Outside Arizona but Within the United States. Where the corporation or partnership or unincorporated association to be served is located outside the state but within the United States, service under this rule shall be made on one of the persons specified in Rule 41(J).

F. Service upon Individuals in a Foreign Country. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than a minor or an incompetent person, may be effected in a place not within any judicial district of the United States:

1. by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

2. if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

a. in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

b.as directed by the foreign authority in response to a letter rogatory or letter of request; or

c. unless prohibited by the law of the foreign country, by

1) delivery to the party to be served personally of a copy of the summons and of the pleading; or

2) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

3) by other means not prohibited by international agreement, as may be directed by the court.

G. Service of Summons Upon Minors and Incompetent Persons in a Foreign Country. Service upon a minor, a minor with a guardian or an incompetent person in a place not within any judicial district of the United States shall be effected in the manner prescribed by subdivision (F)(2)(a) or (F)(2)(b) ~~of paragraph F~~ ~~of this rule~~, or by such means as the court may direct.

H. Service of Summons Upon Corporation and Associations in a Foreign Country. Unless otherwise provided by federal law, service upon a corporation or upon a partnership or other unincorporated association that is subject to suit under a common name, and from which a waiver of service has not been obtained and filed, shall be effected in a place not within any judicial district of the United States in any manner prescribed for individuals by paragraph F ~~of this rule~~ except personal delivery as provided in subdivision (2)(c)(1) thereof.

I. Service of Summons upon a Foreign State or Political Subdivision Thereof. Service of a summons upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608.

J. Time for Appearance after Service Outside State. Where service of the summons and copy of a pleading and other documents required to be served is made outside the state by any means authorized by this rule, the person served shall appear and answer within thirty (30) days after completion thereof in the same manner and under the same penalties as if that person had been personally served with a summons within the county in which the action is pending.

COMMITTEE COMMENT

This rule is based on Rule 4.2, *Arizona Rules of Civil Procedure*. Rules 41(M) and ~~Rule~~ 42(D) are intended to require personal service prior to the court adjudicating issues of paternity, child support, spousal maintenance, division of marital property or any other issue that does require personal jurisdiction over the parties. *Taylor v. Jarrett*, 191 Ariz. 550, 959 F. 2d 807 (App. 1998). Service by publication is sufficient for the court to dissolve a marriage, enter custody orders and resolve any other *in rem* or *quasi in rem* issue that does not require personal jurisdiction. This rule does not follow the holding in *Master Financial, Inc. v. Woodburn*, 208 Ariz. 70, 90 P.3d 1236 (App. 2004), applicable to Rule 4.1, *Arizona Rules of Civil Procedure*.

The purpose of paragraph C is to allow service out-of-state not only through the U.S. Postal Service, but also through other national courier services, such as Federal Express, DHL and United Parcel Service, which provide service and delivery of parcels with signature confirmation of delivery. These services provide for on-line tracking of parcels and signature confirmation, which can be viewed and printed from a computer.

Rule 43. Service and Filing of Pleadings and Other Papers; Sensitive Data Form

A. Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original petition, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule~~s~~ 40, 41, ~~and~~ or 42, as applicable.

B. Service; Parties Served; Continuance. When there are several respondents, and some are served with summons and others are not, the petitioner may proceed against those served or continue the action. The court may order the petitioner to proceed against those served.

C. Service after Appearance; Service after Judgment; How Made.

1. *Serving an Attorney*. Except for petitions for contempt, orders of protection and injunctions against harassment, which must be served pursuant to Rules 41 and 42, service under this rule must be made on the attorney unless the court orders service on the party.

2. *Service in General*. A paper is served under this rule by:

a. handing it to the person;

b. leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

c. mailing it via U.S. mail to the person's last known address--in which event service is complete upon mailing; or

~~d. leaving it with the court clerk if the person's address is unknown; or~~

~~e~~d. delivering the paper by any other means, including electronic means, if the recipient consents in writing to that method of service or if the court orders service in that manner--in which event service is complete upon transmission.

3. *Certificate of Service*. The date and manner of service shall be noted on the original of the paper served or in a separate certificate. If the precise manner in which service has actually been made is not so noted, it will be conclusively presumed that the paper was served by mail. This conclusive presumption shall only apply if service in some form has actually been made.

4. *Service After Judgment*. After the time for appeal from a judgment has expired or a judgment has become final after appeal, the service of a motion, petition, or other pleading required to be served and requests for modification, vacation, or enforcement of that judgment, shall be served pursuant to Rule~~s~~ 40, 41 ~~and~~ or 42, as applicable, as if serving a summons and petition.

D. Filing; Attachments; Public Access.

1. *Filing.* All papers after the petition required to be served upon a party or to be filed with the court within a specified time shall be both filed with the clerk of the court and served within that specified time.

2. *Papers Not to Be Filed.* The following papers shall not be filed separately and may be filed as attachments or exhibits to other documents only when relevant to the determination of an issue before the court:

a. *Subpoena Papers.* Any *praecipe* used solely for issuance of a subpoena or subpoena *duces tecum*, any subpoena or subpoena *duces tecum*, and any affidavit of service of a subpoena, except for post-judgment proceedings.;

b. *Discovery Papers.* Notices of deposition; depositions, interrogatories and answers; requests for production, inspection or admission, and responses; requests for physical and mental examination; and notices of service of any discovery or discovery response;

c. *Proposed Pleadings.* Any proposed pleading, except such pleading may be filed after ruling by the court if necessary to preserve the record on appeal;

d. *Prior Filings.* Any paper that has previously been filed in the case (if a party desires to call the court's attention to anything contained in a previously filed paper, the party shall do so by incorporation by reference); and

e. *Authorities Cited In Memoranda.* Copies of authorities cited in memoranda, unless necessary to preserve the record on appeal.

3. Copies to Assigned Judicial Officer. After filing of the original petition, a copy of each filed document shall be provided to the judicial officer to whom the pending matter is assigned. A statement of compliance with this requirement shall appear on the original of the pleading.

~~3~~ 4. *Attachments to Judge*. Except for proposed orders and proposed judgments, a party may attach copies of papers not otherwise to be filed under this rule to a copy of a motion or memorandum of points and authorities delivered to the judge to whom the case has been assigned. Any such papers provided to the judge must also be provided to all other parties.

~~4~~ 5. *Sanctions.* For violation of this rule, the court may order the removal of the offending document and charge the offending party or counsel such costs or fees as may

be necessary to cover the clerk's costs of filing, preservation, or storage, and the court may impose any additional sanctions provided in Rule 76(D).

~~5~~ 6. *Public Access.* By administrative order of the presiding judge or local rule, upon commencement of an action, the filing of a pleading pursuant to Rule 24 or the filing of a Petition for an Order of Protection or a Petition for Injunction Against Harassment, all court documents, records and evidence related thereto shall be unavailable to the general public until ~~the affidavit of service thereof is filed, or~~ forty-five (45) days have passed since the filing of the petition with the court~~, whichever occurs first~~. The foregoing notwithstanding, judicial officers, court and clerk's office personnel, case parties and their associated attorneys of record, and any other persons as ordered by the court may have access to the documents in a manner determined by the clerk of court at any time.

E. Filing with the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge and, in that event, the judge shall note thereon the filing date and forthwith transmit them to the clerk of the court.

F. Proposed Orders and Judgments. Except as otherwise specifically provided for in these rules, a proposed order or proposed decree shall be prepared as a separate document and shall not be included as an integral part of a motion, stipulation, or other document. The proposed order or proposed decree shall be prepared in accordance with this paragraph and Rule 30(D), and shall contain the following information as single-spaced text on the first page of the document:

1. to the left of the center of the page starting at line one, the filing party's printed name, address, telephone number, State Bar of Arizona attorney identification number, and any State Bar of Arizona law firm identification number, along with an identification of the party being represented by the attorney, e.g., petitioner, respondent, third party petitioner, etc. (note: if the document is being presented by a litigant representing himself or herself, all of this information shall be included except the State Bar of Arizona identification numbers);

2. centered on or below line six (6) of the page, the printed title of the court;

3. below the title of the court and to the left of the center of the paper, the printed title of the action or proceeding;

4. opposite the title, in the space to the right of the center of the page, the printed case number of the action or proceeding; and

5. immediately below the case number, a brief printed description of the nature of the document.

There shall be at least two (2) lines of text on the signature page. Any proposed form of order or proposed form of judgment shall be served upon all parties and counsel simultaneous with its submission to the court for consideration. Proposed orders and proposed judgments shall not be filed or docketed by the clerk of the court until after

judicial review and decision to sign, modify or reject. A party may file an unsigned order or judgment to preserve the record on appeal.

G. Sensitive Data.

1. *Filing Sensitive Data.*

a. Before filing any ~~paper~~ document containing sensitive data with the court, the filing party shall omit or otherwise redact the sensitive data unless they are specifically requested by the court. If the sensitive data are specifically requested by the court, the filer shall record the requested information on a separate sensitive data form which shall be maintained by the clerk as a confidential record and only available to the parties, the parties' attorneys, court personnel and any other person or agency authorized by court order. The clerk shall not release addresses protected by court order without a subsequent court order authorizing its release. In the discretion of the clerk, sensitive data forms, ~~and~~ orders of assignment and orders to Stop Order of Assignment may be maintained either in paper or electronic format. If these documents are maintained electronically, the clerk is authorized to destroy ~~the~~ any paper version. Unless the court orders otherwise, any further written reference to sensitive data shall thereafter be made by referring to a corresponding item number on the sensitive data form or other means, rather than inserting the actual data into the document being filed with the court.

b. Whenever new information is needed to supplement the record in a case, the parties or their attorneys shall file an updated sensitive data form, reflecting all previously disclosed sensitive data plus any additional sensitive data required to be filed in the case.

c. Orders of Assignment and Orders to Stop Order of Assignment shall contain any sensitive data required by law, but shall be ~~closed~~ confidential and only available to the parties, the parties' attorneys, the parties' employers, child support enforcement agencies, court personnel, and any other person or agency authorized by court order.

d. The provisions of subdivision 1(a) shall not pertain to orders or decrees, or to petitions and accompanying documents filed pursuant to the Uniform Interstate Family Support Act (UIFSA) as adopted by the state of Arizona.

e. If a document containing sensitive information is filed with a court, any party or their attorney may request that the court order that the document be sealed ~~or removed from the file~~ and/or replaced with an identical document with the sensitive data redacted or removed.

2. *Sensitive Data Defined.* For purposes of this rule, "sensitive data" means social security numbers, driver's license numbers, bank account numbers, credit card numbers, and other financial account and personal identifying numbers. After filing of the

Confidential Information Form, all reference in file documents to the accounts and identifiers contained therein shall be made using only the last four digits of such account numbers and identifiers.

3. *Sensitive Data Form.* ~~The~~ A form substantially similar to Form 3, Confidential Sensitive Data Form~~, provided in Rule 97, Form 3, or a substantially similar form,~~ shall be used.

COMMITTEE COMMENT

This rule is based on Rule 5, *Arizona Rules of Civil Procedure*.

2006 COURT COMMENT

Rule 43(C) was amended; (i) to make the rule easier to understand, (ii) to transfer and slightly modify the electronic service provisions in Rule 124(e) and (g) of the Rules of the Supreme Court of Arizona to Rule 43(C)**;** and (iii) to authorize service by other means if the recipient consents in writing or the court so orders.

Like the former Rule 124(e), the amended rule authorizes service by electronic means if the recipient consents to such service in writing. As with other methods of service, an electronically served paper must be in final form, which may be signified by the serving party's signature or by a notation or action that is deemed by agreement, local rule or court order as being the equivalent of the serving party's signature. The consent to electronic service must be express, and may not be implied from conduct. For example, an attorney's listing of his or her e-mail address on court filings, correspondence or on a website does not constitute "consent" within the meaning of this rule. Consent may be communicated by electronic means. The amended rule eliminates the provision in former Rule 124(e) requiring the consent to be filed with the court. The amended rule also authorizes service by "other means" if the recipient consents to such service in writing. "Other means" includes facsimile transmission and transmission by an overnight delivery service. Again, consent must be express, and may not be implied from conduct.

Parties are encouraged to specify the scope and duration of the consent to electronic service and service by "other means." The specification should include at least the names of the persons to whom service should be made, the appropriate address or location for such service (such as the e-mail address or facsimile machine number), and the format to be used for attachments.

The amended rule also authorizes courts to order service by "any other means, including electronic means." The prior rule already authorized courts to permit service by facsimile, and this authority has been extended to authorize a court to permit other methods of service. In some instances, it may be appropriate to authorize alternative service methods over a party"s objection because of the exigencies of the case, difficulties of hand-delivery or other factors. In deciding whether to authorize such methods, a court should consider whether: (i) an additional copy of the paper must be served by another method specifically authorized by Rule 43(C) (such as mailing or hand-delivery); (ii) whether page limitations should be imposed (such as in the case of facsimile service); and (iii) whether the recipient's costs associated with an alternative service

method (such as in the case of facsimile delivery) should be included as a taxable cost.

Service by electronic means or by "other means" is complete upon transmission, which occurs when the sender does the last act that must be performed by the sender. For example, electronic service is complete when the sender executes the "send" command on a computer to transmit the paper to the recipient. Similarly, facsimile service is complete when transmission of the paper on a facsimile machine is completed. Likewise, service by an overnight delivery service is complete when the sender makes delivery to the service designated to make the overnight delivery to the recipient. As with other modes of service, evidence that the intended recipient did not receive a paper served by these methods may defeat the presumption that service has been effected.

The amended rule also eliminates the requirement that certificates of service must be filed with the court whenever service is effected under the rule. The amended rule, however, is not intended to modify the requirement that a certificate of service accompany any paper that is served on a party or is filed with a court.

V. DEFAULT DECREE, CONSENT DECREE, AND DISMISSAL

Rule 44. Default Decree

A. Application and Entry. When a party against whom a judgment for affirmative relief is sought has failed to respond or otherwise defend as provided by these rules, the clerk shall enter that party's default in accordance with the procedures set forth below. All requests for entry of default shall be by written application to the clerk of the court in which the matter is pending.

1. *Notice*.

a. *To the Party*. When the whereabouts of the party claimed to be in default are known by the party requesting the entry of default, a copy of the application for entry of default shall be mailed to the party claimed to be in default.

b. *Represented Party*. When a party claimed to be in default is known by the party requesting the entry of default to be represented by an attorney, whether or not that attorney has formally appeared, a copy of the application shall also be sent to the attorney for the party claimed to be in default. Nothing herein shall be construed to create any obligation to undertake any affirmative effort to determine the existence or identity of counsel representing the party claimed to be in default.

c. *Whereabouts of Unrepresented Party Unknown*. If the whereabouts of a party claimed to be in default are unknown to the party requesting the entry of default and the identity of counsel for that party is also not known to the requesting party, the application for entry of default shall so state and shall be mailed to the unrepresented party's last known address.

2. *Effective Date of Default*. A default entered by the clerk shall be effective ten (10) days after the filing of the application for entry of default.

3. *Effect of Responsive Pleading*. A default shall not become effective if the party claimed to be in default pleads or otherwise defends as provided by these rules prior to the expiration of ten (10) days from the filing of the application for entry of default.

4. *Applicability*. The provisions of this rule requiring notice prior to the entry of default shall apply only to a default sought and entered pursuant to this rule.

B. Judgment by Default. Judgment by default may be entered as follows:

1. *By Motion without Hearing*.

a. When the petitioner's claim against a respondent is for a sum certain or for a sum that can by computation be made certain, the court upon motion of the petitioner and upon affidavit of the amount due shall enter judgment for that amount and costs against the respondent, if the respondent has been defaulted for failure to appear and is not a minor or incompetent person. If the claim states a specific sum of attorneys' fees that will be sought in the event judgment is rendered by default, and if such award is allowed by law and is supported by the affidavit, the judgment may include an award of reasonable attorneys' fees not to exceed the amount of the demand therefore. If the claim requests an award of attorneys' fees, but fails to specify the amount of such fees that will be sought in the event judgment is rendered by default, the judgment may include an award of attorneys' fees, if such an award is allowed by law and the reasonable amount therefor is established by affidavit, where the respondent has not entered an appearance in the action.

b. 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:

1) 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; and

2) ~~the parties waive any right to spousal maintenance.~~ neither party requests spousal maintenance.

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 statements supporting the relief requested in the proceeding, including an award of attorneys' fees, if applicable. A default decree under this rule is not available if the adverse party is a minor 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.

c. When a petition to establish maternity or paternity has been filed and an order of custody or parenting time is not requested, a judgment may be entered upon motion supported by an affidavit or affidavits of the state or the mother or the father. In cases where the default judgment is requested by the state, the factual basis for the finding of paternity shall be established by the affidavit of a parent. The supporting affidavit(s) shall set forth facts showing that jurisdictional requirements have been met and that a default order is appropriate pursuant to A.R.S. § 25-813. If entry of an order for current and past support is requested, the motion shall be accompanied by a child support worksheet~~s~~ to support the

amounts requested and the supporting affidavit shall state the basis for the determination~~(s)~~ of the gross income of the defaulting parent. The affidavit shall also set forth facts supporting any other relief requested.

2. *By Hearing*. In all other cases the party entitled to a judgment shall apply to the court therefore, but no judgment by default shall be entered against a minor or an incompetent person unless represented in the action by a guardian, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, that party or, if appearing by representative, that party's representative shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the relief to be granted, or to establish the truth of any statement by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper. The defaulted party is in the position of having admitted each and every material allegation of the petition.

Once a defaulted respondent has made a motion under the provisions of this rule, the trial court shall allow respondent to participate in the hearing to determine what, if any, is appropriate relief to be awarded petitioner pursuant to the Petition, or to establish the truth of any statement.

3. *Past Support and Arrearage Judgments*. No judgment by default under this rule shall be entered for any amount of child support accruing for periods of time prior to the date of filing of the petition to establish the first order for child support unless the party seeking support has notified the party from whom support is sought of the specific amount of such past support sought in the petition or in the notice required pursuant to paragraph A. No judgment by default for any amounts of child support arrears accruing for periods of time prior to the filing of a petition for order to appear scheduled pursuant to Rule 26(C) shall be entered for failure to appear at such hearing unless the party filing the petition has notified the responding party of the specific amount of such arrears sought in the petition or in a separate written notice filed and served upon the responding party at least 10 judicial days prior to the haring setting forth the specific amount sought.

4. *Informing Defaulted Party.* When a decree or judgment is entered by default, except in those cases resulting from default after service by publication, the party obtaining the decree or judgment shall certify that, within 24 hours of the that party's receipt of the decree, that party will mail a copy of the decree or judgment to the other party at the other party's last know address, and shall place a record of the mailing on the decree or judgment entered, affect the time to appeal, or relieve a party form any obligations.

C. Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 85(C).

D. Petitioners, Counterclaimants. The provisions of this rule apply whether the party entitled to the judgment by default is a petitioner, a third-party petitioner, or a party who has pleaded a counterclaim.

E. Judgment against the State. No judgment by default shall be entered against the state or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.

F. Judgment When Service by Publication; Statement of Evidence. Where service of process has been made by publication and no answer has been filed within the time prescribed by law, judgment shall be rendered as in other cases, but a record of the proceedings, in a form approved by the court, shall be maintained by the clerk of the court unless designated otherwise by the court.

G. Request for Judgment. A judgment by default shall not be different in kind from or exceed the amount requested in the pleadings. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, consistent with the best interests of the child(ren), even if the party has not requested such relief in the party's pleadings, except that awards of spousal maintenance and for attorneys' fees must be specifically pled for such relief to be granted through a default judgment.

COMMITTEE COMMENT

This rule is based on Rule 55, *Arizona Rules of Civil Procedure*.

Rule 45. Consent Decree, Order, or Judgment Without Hearing

A. General. Whenever the petitioner and respondent agree to the terms of a legal separation, annulment, dissolution, paternity, or maternity action, the parties may elect to proceed by Consent Decree, Order, or Judgment without hearing, upon a showing that the required appearance fees have been paid or deferred. Additionally, for a dissolution or legal separation, sixty (60) days must have passed since the service of process or acceptance of service prior to the submission of the Consent Decree. To proceed with a Consent Decree of Dissolution of Marriage, the parties shall jointly submit a decree substantially similar to Form 8, Consent Decree, ~~substantially in compliance with Rule 97, Form 8~~ and shall state the terms upon which the parties have agreed. The judge or commissioner assigned to the case shall determine whether the parties have met the requirements for a Decree, Order, or Judgment by consent.

B. Decree, Order, or Judgment. The Decree, Order, or Judgment shall comply with the requirements of this paragraph B**.**

1. If a party is represented by counsel, counsel and the party shall sign the Decree, Order, or Judgment, and if a party is not represented by counsel, the party shall sign the Decree, Order, or Judgment.

2. If any party is receiving benefits under Temporary Assistance for Needy Families (TANF) (formerly AFDC) or the Title IV-D program, the parties shall obtain the written approval of the Attorney General for any specified child support amount.

3. In any action for dissolution, annulment, or legal separation, the parties shall indicate the following:

a. whether the marriage is or was a covenant marriage;

b. whether there are children common to the parties; and

c. whether the wife is pregnant with a child common to the parties.

4. The Consent Decree, Order, or Judgment shall state that: (a) the parties agree to proceed by consent; (b) each party believes no duress or coercion is involved; (c) for any dissolution or legal separation, each party believes that any division of property is fair and equitable; (d) each party understands that he or she (i) may retain or has retained legal counsel of his or her choice and (ii) is waiving the right to trial; and (e) the effect, if any, on any existing protective orders. ~~The Consent Decree, Order or Judgment shall also state the effect thereof, if any, on any protective orders.~~

5. The Consent Decree, Order, or Judgment shall be dated and signed by both parties, and the signature of each party shall be subscribed and sworn to (or affirmed to) before a notary public. Instead of notarization, the person may sign the consent decree in the presence of the clerk after verification of the person's identity by the clerk. If a party is represented by counsel, counsel also shall sign the Consent Decree.

C. When Children Are Involved. When there are children common to the parties, the parties shall include the following:

1. provision for custody and parenting time by a separate parenting plan or within the Consent Decree, Order, or Judgment;

2. a separate or incorporated Child Support Order supported by a separate or incorporated Child Support Worksheet (if any deviation in the child support amount is requested, the Consent Decree, Judgment or Child Support Order shall include a statement of the basis for deviation, as set forth in the Child Support Guidelines);

3. copies of each parent's Parent Information Program Certification of Completion;

4. a completed Order of Assignment, including current employer information sheet;

5. a completed Judgment Data Sheet, if required;

6. if the parties are requesting joint custody, a statement as to whether domestic violence has occurred, and the extent of any such violence; and

7. for a paternity or maternity action, the identity of the natural mother and father, and anyone who has lawful status as a parent or custodian of a child, including the court case conferring such authority if not the instant case.

Rule 46. Dismissal

A. Voluntary. Any family law case or post-decree petition may be dismissed (1) by the petitioner or the filing party without order of court by filing a notice of dismissal at any time before ~~service~~ filing of a response, or (2) by order of the court pursuant to a stipulation of dismissal signed by all parties who have appeared in the action. If a response has been filed to a petition or post-decree petition, the petition may be dismissed by the petitioner or the filing party only by motion and upon such terms and conditions as the court deems proper, including proper adjudication of any pending counterclaims or counter petitions filed by an opposing party. Unless otherwise stated in the notice or order of dismissal, the dismissal is without prejudice.

B. Involuntary Dismissal; Effect.

1. One hundred twenty (120) days after filing of a petition, if no Motion to Set has been filed by either party, or if the court has not set the matter for trial, hearing, or conference, the court may issue a notice that the matter will be dismissed by the court in not less than sixty (60) days without further notice, unless prior to the expiration of the sixty (60) days a proper Motion to Set or a request for hearing or conference is filed. No case shall be dismissed, however, while there is pending before the court a motion for summary judgment, motion for judgment on the pleadings, or a motion related to genetic testing in a paternity matter. These periods may be extended by the court for good cause shown.

2. For failure of the petitioner to prosecute or to comply with these rules or any order of court, a respondent may move for dismissal of an action or of any claim against the respondent.

3. The court may dismiss any action, post-decree petition, or any pending claim for failure to prosecute the matter after giving all parties notice and an opportunity to object or commence prosecution.

4. Unless otherwise stated in the notice or order of dismissal, the dismissal is without prejudice.

C. Dismissal of Third Party Claim and Counterclaim. The provisions of this rule apply to the dismissal of any third party claim or counterclaim. A voluntary dismissal by the claimant alone pursuant to subdivision A(1) shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

D. Effect of Dismissal. Unless otherwise specifically ordered by the court, the entry of an order dismissing a case serves to dismiss all pending, unadjudicated petitions and issues, but does not dismiss, vacate, or set aside any final Decree, Judgment or Order previously entered in the case.

E. Dismissal Authority. The authority of the court to issue notices and dismiss cases and post-decree petitions for lack of service under Rule 41(I) and for lack of prosecution under Rules 46 and 91(R) may be performed by court administration or by an appropriate electronic process under supervision of the court.

COMMITTEE COMMENT

This rule is based in part on Rule 41, *Arizona Rules of Civil Procedure*. Paragraph B ~~of this rule~~ is an adaptation of that portion of existing Rule 38.1, *Arizona Rules of Civil Procedure*, which deals with dismissals from the Inactive Calendar. The Committee recognizes that the time periods set forth in subdivision B(1) are the same as those set forth in Rule 40(I); however, the word "may" as used in subdivision B(1) allows different counties to impose a time period in excess of ~~four months~~ one hundred twenty (120) days after filing.

VI. TEMPORARY ORDERS

Rule 47. Temporary Orders

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

1. *Custody and Parenting Time.* If a party seeks a temporary custody, parenting time, or visitation order, the motion shall set forth a proposed parenting plan specifically stating the custody, parenting time, and visitation requested for all parties to the action.

2. *Child Support.* If a party seeks a temporary child support order, the party shall include and file with the motion a completed a Child Support Worksheet setting forth the amount requested in accordance with the current *Arizona Child Support Guidelines*. The movant shall also provide copies of all child support disclosure documents required by Rule 49(B) to the opposing party within the time period specified in paragraph E ~~of this rule~~, and shall provide an additional copy of these documents to the court at the time of any evidentiary hearing held on the motion.

3. *Spousal Maintenance.* If a party seeks a temporary spousal maintenance order, that party shall state the specific duration and amounts requested and file an affidavit substantially similar to Form 2, Affidavit of Financial Information ~~on a form substantially in compliance with Rule 97, Form 2~~.

4. *Property, Debt, and Attorneys' Fees.* If a party seeks temporary orders to exclude a party from a residence, to divide community property, or to order payment of debt, expenses, or attorneys' fees, the motion shall set forth the specific relief requested, the proposed division of property, the income and assets that will be available to each party, and the responsibility each will have for payment of debt, expenses, and attorneys' fees if the order is granted. If a party seeks a temporary order for payment of attorneys' fees that party shall state the specific amount requested and file an affidavit substantially similar to Form 2, Affidavit of Financial Information ~~on a form substantially in compliance with Rule 97, Form 2~~.

B. Motions for Post-Decree or Post-Judgment Temporary Custody Orders. A party seeking a temporary custody, parenting time, or visitation order ~~under A.R.S. §§ 25-404, 25-408, or 25-1034,~~ following a previous custody determination, shall do so by filing a separate verified motion setting forth the legal and jurisdictional basis for the motion and the specific relief requested. The motion shall be filed after or concurrently with a post-decree or post-judgment petition authorized by statute, shall incorporate the relevant allegations of the pending post-decree or post-judgment petition by reference and not separately repeat them, and shall set forth

the relief requested, including a proposed parenting plan stating the custody and parenting time requested for all parties to the action. Upon receiving a post-decree or post-judgment motion for temporary custody, parenting time, or visitation orders, the court shall schedule a post-decree or post-judgment management conference, or an evidentiary hearing at an appropriate time determined by the court.

C. Order To Appear. Unless a different procedure is established by local rule, the moving party shall submit to the assigned judicial officer the original and three (3) copies of an order substantially similar to Form 13, Order To Appear ~~in substantially the form set forth in Rule 97, Form 13~~, three (3) copies of the Motion, and three (3) copies of the financial documents required by paragraph A ~~of this rule~~. The clerk of the court shall file the original Order to Appear when signed by the assigned judicial officer.

D. Hearing. Upon receiving a Motion for Temporary Orders and documents required by paragraph C in a pre-decree matter, the court shall schedule ~~issue an Order to Appear at~~ a pretrial conference, a Resolution Management Conference pursuant to Rule 76(A), or an evidentiary hearing, which shall be set not later than thirty (30) days after receiving the motion. In the event the court holds a pretrial conference or Resolution Management Conference at which all issues are not resolved, the court shall then set an evidentiary hearing not later than thirty (30) days thereafter to resolve the remaining issues, unless the parties agree to a different timeframe or procedure. The court shall not resolve disputed issues of fact at a pretrial conference or Resolution Management Conference absent agreement of the parties. The court for good cause shown may extend the timeframes set forth in this paragraph.

E. Service. The moving party shall serve all parties with the required documents indicated in paragraph C in accordance with the service requirements of these rules. Service shall be completed at least ten (10) judicial days prior to the date of the scheduled conference or hearing on the motion unless otherwise ordered by the court.

F. Response. Any party served with an Order To Appear on a Motion For Temporary Orders shall not be required to file a formal response to the Motion For Temporary Orders but shall fully comply with the requirements of paragraph G, and if the motion requests child support, shall likewise file a completed Child Support Worksheet, copies of which shall be provided to the assigned judicial officer, the opposing party's attorney or, if unrepresented, to the opposing party not later than three (3) days prior to the time set for hearing. A party filing a formal response to the Motion For Temporary Orders shall verify the response.

G. Requirements Prior To Conference or Hearing. If the court has set the motion for a pretrial conference, Resolution Management Conference pursuant to Rule 76(A), or an evidentiary hearing, the parties and counsel shall meet and confer (if there is a current court order prohibiting contact of the parties or a significant history of domestic violence between the parties, the parties shall not be required to personally meet or contact each other in violation of the court order, but the parties and their counsel shall take all steps reasonable under the circumstances to resolve as many issues as possible), comply with the disclosure requirements of Rule 49, and submit a ~~written Resolution Statement as prescribed by Rule 97,~~ Resolution Statement substantially similar to Form 4 or 5, as applicable, not less than five (5) days prior to the date set for the pre-trial conference, Resolution Management Conference or evidentiary

hearing. At least three (3) judicial days prior to an evidentiary hearing, the parties shall exchange any exhibits to be offered at the hearing, and a list of the names, addresses and telephone numbers of all witnesses who may testify.

H. Attendance. All parties and, if represented, counsel, must be present at any pretrial conference, Resolution Management Conference, or evidentiary hearing set by the court. If a party fails to appear, the court may impose sanctions provided by Rule 76(D).

I. Simplified Child Support Order. Unless otherwise provided by local rule, a party seeking a temporary child support order under A.R.S. §§ 25-315 or 25-817 may request a simplified order by filing with the court a verified Motion for Simplified Temporary Child Support Order, a completed Child Support Worksheet, a proposed Simplified Temporary Child Support Order, and a proposed Order of Assignment. The motion shall provide that the responding party is required to timely file a response, a completed Child Support Worksheet, and submit a proposed simplified ~~t~~Temporary ~~c~~Child ~~s~~Support ~~o~~Order and a proposed ~~o~~Order of ~~a~~Assignment, and if a hearing is requested, a notice of hearing, and that failure to do so may result in a Temporary Child Support Order being entered as requested by the moving party. Upon service of process, the other party shall have twenty (20) days, if served in Arizona, or thirty (30) days if served out of the State of Arizona, to file a response. If no response is filed, or if the response does not specifically contest the child support requested in the motion, the proposed Simplified Temporary Child Support Order and Order of Assignment shall be entered, without hearing, provided that the available information in support of the temporary order appears accurate and provides the court with adequate information to determine the amount of child support pursuant to the Arizona Child Support Guidelines. The entry of a Simplified Temporary Child Support Order does not prejudice the rights of the parties to have the issue finally determined at a subsequent hearing or trial.

J. Summary Temporary Child Support Order. If upon review of the pleadings and the supporting documents submitted pursuant to paragraph I, or, if at the time of the Resolution Management Conference, the court determines that the party entitled to receive child support is seeking an amount that is less than or equal to 150% of the amount of child support the obligor is willing to pay, the court may enter a Summary Temporary Child Support Order within the range of the parties' positions without an evidentiary hearing. The entry of a Summary Temporary Child Support Order does not prejudice the rights of the parties to have the issue finally determined at a subsequent hearing or trial. The parties' positions under this paragraph must be based on an application of the *Arizona Child Support Guidelines*.

K. Request for Expedited Hearing. Any request for an expedited hearing shall include in the caption "Expedited Hearing Required," and the motion shall set forth the specific facts necessitating an expedited hearing. A request for an expedited hearing may be considered by the court without response or oral argument.

L. Local Procedures. Nothing contained in this rule shall preclude any county from implementing an alternative temporary child support process by local rule or administrative order.

M. Enforceability of Temporary Orders. Temporary orders signed by the court and filed by the clerk are enforceable as final orders during the pendency of the action. Temporary orders become ineffective and unenforceable upon termination of an action either by dismissal or following entry of a final decree, judgment, or order, unless that final decree, judgment, or order provides otherwise. Orders of Protection and Injunctions Against Harassment are not subject to the provisions of this rule.

N. Sanctions. Failure to comply with this rule may result in sanctions pursuant to Rule 71.

COMMITTEE COMMENT

The pretrial conference referred to in this rule is intended to be a brief hearing at which the goals set forth in Rule 76(A)(3)(c) through (f) are considered.

Rule 48. Temporary Orders without Notice

A. Filing ~~Affidavit~~. A party seeking a temporary order without notice shall do so by filing a ~~separate, verified~~ motion, verified or supported by affidavit, together with a proposed form of order, and a notice of hearing on the motion. The motion shall be filed after or concurrently with an initial pre-decree, post-decree or post-judgment petition. A temporary order may be granted without written or oral notice to the other party or that party's attorney only if:

1. it clearly appears from specific facts shown by affidavit or by the verified motion that irreparable injury will result to the moving party or a minor child of the party, or that irreparable injury, loss, or damage will result to the separate or community property of the party if no order is issued before the other party can be heard in opposition; and

2. the moving party or the party's attorney certifies to the court, in writing, the efforts, if any, that have been made to give the notice to the other party or the reasons supporting the claim that notice should not be required.

B. Order. A temporary order granted without notice shall define the injury, loss, or damage and state why it is irreparable, and shall state why the order was granted without notice. Such order shall expire by its terms at the date and time set for hearing on the motion for temporary orders without notice unless extended by the court for good cause shown. A hearing shall be set on the motion for temporary orders without notice within ten (10) days from the entry of the order, unless extended by the court for good cause shown. The order and notice of hearing shall be served upon the other party as soon as possible after issuance of the order or as otherwise ordered by the court. Nothing herein shall prevent the party against whom a temporary order without notice has been issued from requesting an earlier hearing upon reasonable notice as directed by the court.

C. Bond. No bond shall be required unless the court deems it appropriate.

COMMITTEE COMMENT

This rule is based on Rule 65(d), *Arizona Rules of Civil Procedure*.

VII. DISCLOSURE AND DISCOVERY

Rule 49. Disclosure

The requirements of this rule are minimum disclosure requirements for every family law case. Unless otherwise provided for in this rule ~~or~~ agreed to by the parties or ordered by the court, within forty (40**)** days after the filing of a response to an initial petition, each party shall disclose in writing to every other party the information set forth in this rule. The Resolution Statement described in paragraph A shall be filed with the clerk and served upon all parties. All documents and information required in paragraphs B, C, D, E, F, and G shall not be filed with the clerk but shall be served upon all parties.

A. Resolution Statement. Each party shall ~~disclose~~ file a ~~written~~ Resolution Statement substantially similar to ~~in a form that substantially complies with Rule 97,~~ Form 4 or 5, as applicable**,** setting forth any agreements and a specific, detailed position the party proposes to resolve all issues in the case**,** without argument in support of the position. Unless otherwise ordered by the court, a Resolution Statement is not required in proceedings filed pursuant to A.R.S. § 25-409 (grandparent visitation) or A.R.S. § 25-415 (custody by non parent).

B. Child Custody or Parenting Time. In a case in which child custody or parenting time is and issue, unless good cause is shown, the following documents and information shall be served on the other party with the Resolution Statement:

1. A copy of any past or current protective order and underlying petition involving ay party or member of the party's household.

2. The name and address of each treatment provider and period of treatment involving any party for psychiatric or psychological issues, anger management, substance abuse or domestic violence, for the period beginning five years prior to the filing of the petition.

3. The date, description, location and documentation of any criminal charge against or conviction of any party or member of the party's household occurring within ten years of the filing of the petition.

4. The date, description, location and documentation of any Child Protective Services investigation or proceeding involving any party or member of the party's household occurring within ten years of the filing of the petition.

~~B~~**C. Child Support.** In a case in which child support is an issue, unless good cause is stated for not doing so, ~~each party shall disclose~~ the following ~~information~~ documents shall be served with the Resolution Statement:

1. a fully completed affidavit substantially similar to Form 2, Affidavit of Financial Information ~~on a form substantially in compliance with Rule 97, Form 2~~;

2. proof of income of the party from all sources, specifically including complete tax returns, W-2 forms, 1099 forms, and K-1 forms, for the past two (2) completed calendar years, and year-to-date income information for the current calendar year, including, but not

limited to, year-to-date pay stub, salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, recurring gifts, prizes, and spousal maintenance;

3. proof of court-ordered child support and spousal maintenance actually paid by the party in any case other than the one in which disclosure is being provided;

4. proof of all medical, dental, and vision insurance premiums paid by the party for any child listed or referenced in the petition;

5. proof of any child care expenses paid by the party for any child listed or referenced in the petition;

6. proof of any expenses paid by the party for private or special schools or other particular education needs of a child listed or referenced in the petition; and

7. proof of any expenses paid by the party for the special needs of a gifted or handicapped child listed or referenced in the petition.

~~C~~D. **Spousal Maintenance and Attorneys' Fees and Costs.** If either party has requested an award of spousal maintenance or an award of attorneys' fees and costs, ~~each party shall disclose~~ the following ~~information~~ documents shall be served with the Resolution Statement:

1. a fully completed affidavit substantially similar to Form 2, Affidavit of Financial Information ~~on a form substantially in compliance with Rule 97, Form 2~~; and

2. those documents set forth in subdivision B(2) ~~above~~.

~~D~~E. **Property.** Unless the parties have entered into a written agreement disposing of all property issues in the case, or no property is at issue in the case, each party shall provide to the other the following ~~information~~ documents in every action for dissolution of marriage or for legal separation:

1. copies of all deeds, deeds of trust, purchase agreements, escrow documents, settlement sheets, and all other documents that disclose the ownership, legal description, purchase price and encumbrances of all real property owned by any party;

2. copies of all monthly or periodic bank, checking, savings, brokerage and security account statements in which any party has or had an interest for the period commencing six (6) months prior to the filing of the petition and through the date of the disclosure;

~~3. copies of all monthly or periodic statements and documents showing the value of all pension, retirement, stock option, and annuity balances, including Individual Retirement Accounts, 401(k) accounts, and all other retirement and employee benefits and accounts in which any party has or had an interest for the period commencing six (6) months prior to the filing of the petition and through the date of the disclosure, or if~~

~~no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information;~~

3. Copies of all monthly or periodic statements and documents showing the value of all pension, retirement, stock option (reflecting grant date, vesting, exercise price and prior exercises), and annuity balances, including Individual Retirement Accounts, 401(k) accounts, and all other retirement and employee benefits and accounts in which any party has or had an interest for the period commencing six (6) months prior to the filing of the petition and through the date of the disclosure, and, if a claim for premarital accumulation is made as to a defined contribution plan, copies of all monthly or periodic statements and documents showing values, contributions, withdrawals, loans and earnings an losses from the date of marriage to the date of disclosure, or if no monthly or quarterly statements are available during these time periods, the most recent statements or documents that disclose the information.

4. copies of all monthly or periodic statements and documents showing the cash surrender value, face value, and premiums charged for all life insurance policies in which any party has an interest for the period commencing six (6) months prior to the filing of the petition and through the date of the disclosure, or if no monthly or quarterly statements are available for this time period, the most recent statements or documents that disclose the information;

5. copies of all documents that may assist in identifying or valuing any item of real or personal property in which any party has or had an interest for the period commencing six (6) months prior to the filing of the petition, including any documents that the party may rely upon in placing a value on any item of real or personal property;

6. copies of all business tax returns, balance sheets, profit and loss statements, and all documents that may assist in identifying or valuing any business or business interest for the last two (2) completed calendar or fiscal years and through the latest available date prior to disclosure with respect to any business or entity in which any party has an interest or had an interest for the period commencing twenty-four (24) months prior to the filing of the petition; and

7. a list of all items of personal property, including, but not limited to, household furniture, furnishings, antiques, artwork, vehicles, jewelry and similar items in which any party has an interest, together with the party's estimate of current fair market value (not replacement value) for each item.

~~E~~**F. Debts.** Unless the parties have entered into a written agreement disposing of all debt issues in the case, each party shall provide to the other the following ~~information~~ documents in every action for dissolution of marriage or for legal separation:

1. copies of all monthly or periodic statements and documents showing the balances owing on all mortgages, notes, liens, and encumbrances outstanding against all real property and personal property in which the party has or had an interest for the period commencing six (6) months prior to the filing of the petition and through the

date of the disclosure, or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information; and

2. copies of credit card statements and debt statements for all months for the period commencing six (6) months prior to the filing of the petition and through the date of the disclosure.

~~F~~G. **Disclosure of Witnesses.** Each party shall disclose the names, addresses, and telephone numbers of any witness whom the disclosing party expects to call at trial, along with a statement fairly describing the substance of each witness's expected testimony. A party shall not be allowed to call ~~a~~ witnesses who ~~has~~ have not been disclosed at least sixty (60) days before trial, or such different period as may be ordered by the court.

~~G~~H. **Disclosure of Expert Witnesses.** Each party shall disclose the name, ~~and~~ address and telephone number of ~~each~~ any person whom the disclosing party expects to call as an expert witness at trial, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness, and the name and address of the custodian of copies of any reports prepared by the expert. A party shall not be allowed to call an expert witness who has not been disclosed at least sixty (60) days before trial or such different period as may be ordered by the court.

~~H~~I. **Continuing Duty to Disclose.** The duty described in this rule shall be a continuing duty, and each party shall make additional or amended disclosures whenever new or different information is discovered or revealed. Such additional or amended disclosures shall be made not more than thirty (30) days after the information is revealed to or discovered by the disclosing party.

~~I~~J. **Additional Discovery.** Nothing in the minimum requirements of this rule shall preclude relevant additional discovery on request by a party in a family law case, in which case further discovery may proceed as set forth in Rule 51.

COMMITTEE COMMENT

This rule is based on Rule 26.1, *Arizona Rules of Civil Procedure*.

Rule 50. Complex Case Disclosure

Not later than twenty (20) days after filing of a responsive pleading, if a party believes more detailed disclosure is necessary than that set forth in Rule 49, that party shall file a notice with the court that disclosure pursuant to Rule 26.1, *Arizona Rules of Civil Procedure*, shall be required. If this rule is timely invoked, disclosure shall be made by all parties within forty (40) days after the filing of the notice.

Rule 51. Discovery

A. Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission.

B. Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows.

1. *In General.* Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. The frequency or extent of use of the discovery methods set forth in paragraph A may be limited by the court if it determines that:

a. the discovery sought is unreasonably cumulative or duplicative, or obtainable from some other source that is more convenient, less burdensome, or less expensive;

b. the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

c. the discovery is unduly burdensome or expensive, given the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 53.

2. *Trial Preparation: Materials.* Subject to the provisions of subdivision B(3), a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision B(1) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney or consultant) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials ~~when the required showing has been made~~, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

3. *Prior Statement.* A party may obtain, without ~~the required~~ a showing of substantial need, a statement concerning the action or its subject matter previously made by that party. If the request is refused, the person may move for a court order. The provisions of Rule 65(A)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this ~~paragraph~~ subdivision, a statement previously made is (a) a

written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and is contemporaneously recorded.

~~3.~~4 *Trial Preparation: Experts.*

a. A party may depose any person who has been identified as an expert whose opinions may be presented at trial.

b. A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 63(B) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

c. Unless manifest injustice would result, (1) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions B~~(3)~~(4)(a) and ~~B(3)~~(4)(b); and (2) with respect to discovery obtained under subdivision B~~(3)~~(4)(b), the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

C. Sequence and Timing of Discovery. Unless the court upon motion orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

D. Supplementation of Responses

1. A party is under a duty to supplement any response to a request for discovery, and in any event not later than thirty (30) days prior to trial, except for good cause shown, if:

a. the party knows the response was incorrect when made; or

b. the party knows the response, though correct when made, is no longer true; and

c. the circumstances are such that a failure to amend the response is in substance a knowing concealment.

2. Any witness or evidence not timely disclosed shall not be permitted at trial except for good cause shown or upon written agreement of the parties.

3. A duty to supplement responses may also be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

E. Discovery Requests, Responses, Objections, and Sanctions. The court shall assess an appropriate sanction, including any order under Rule 76(D), against any party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct.

F. Discovery Motions. No discovery motion will be considered or scheduled unless a separate statement of moving counsel is attached thereto certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter.

COMMITTEE COMMENT

This rule is based on Rule 26, *Arizona Rules of Civil Procedure*.

Rule 52. Subpoena

A. Form; Issuance.

1. Every subpoena shall:

a. state the name of the Arizona court from which it is issued; and

b. state the title of the action, the name of the court in which it is pending, and its ~~civil action~~ case number; and

c. command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

d. set forth the recipients' rights and obligations under the subpoenas as follows:

Your Duties In Responding To This Subpoena:

You have the duty to produce the documents requested as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in this subpoena. See Rule 52(D)(1) of the *Arizona Rules of Family Law Procedure*.

If this subpoena asks you to produce and permit inspection and copying of designated books, papers, documents, tangible things, or the inspection of premises, you need not appear to produce the items unless

the subpoena states that you must appear for a deposition, hearing, or trial. See Rule 52(C)(2)(a) of the *Arizona Rules of Family Law Procedure*.

Your Right To Object:

The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The Superior Court enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached. See Rule 52(C)(1) of the *Arizona Rules of Family Law Procedure*.

You may object to this subpoena if you feel that you should not be required to respond to the request(s) made. Any objection to this subpoena must be made within 14 days after it is served upon you, or before the time specified for compliance, by providing a written objection to the party or attorney serving the subpoena. See Rule 52(C)(2)(b) of the *Arizona Rules of Family Law Procedure*.

If you object because you claim the information requested is privileged or subject to protection as trial preparation material, you must express the objection clearly and support each objection with a description of the nature of the document, communication or item not produced so that the demanding party can contest the claim. See Rule 52(D)(2) of the *Arizona Rules of Family Law Procedure*.

If you object to the subpoena in writing, you do not need to comply with the subpoena until a court orders you to do so. It will be up to the party or attorney serving the subpoena to seek an order from the court to compel you to provide the documents or inspection requested, after providing notice to you. See Rule 52(C)(2)(b) of the *Arizona Rules of Family Law Procedure*.

If you are not a party to the litigation, or an officer of a party, the court will issue an order to protect you from any significant expense resulting from the inspection and copying commanded. See Rule 52(C)(2)(b) of the *Arizona Rules of Family Law Procedure*.

You also may file a motion in the superior court of the county in which the case is pending to quash or modify the subpoena if the subpoena:

(1) does not provide a reasonable time for compliance;

(2) requires a non-party or officer of a party to travel to a county different from the county where the person resides or does business in person; or to travel to a county different from where the subpoena was served; or to travel to a place farther than 40 miles from the place of service; or to travel to a place different from any other convenient

place fixed by an order of a court, except that a subpoena for you to appear and testify at trial can command you to travel from any place within the state;

(3) requires the disclosure of privileged or protected information and no waiver or exception applies; or

(4) subjects you to an undue burden. See Rule 52(C)(3)(d) of the *Arizona Rules of Family Law Procedure*.

If this subpoena:

(1) requires disclosure of a trade secret or other confidential research, development, or commercial trade information; or

(2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(3) requires a person who is not a party or an officer of a party to incur substantial travel expense,

the court may either quash or modify the subpoena, or the court may order you to appear or produce documents only upon specified conditions, if the party who served the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that you will be reasonably compensated. See Rule 52(C)(3)(d)(3) of the *Arizona Rules of Family Law Procedure*.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

2. A subpoena commanding attendance at a trial or hearing shall issue from the superior court for the county in which the hearing or trial is to be held. A subpoena for attendance at a deposition shall issue from the superior court for the county in which the case is pending. If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the superior court for the county in which the production or inspection is to be made.

3. The clerk shall issue a subpoena signed, but otherwise blank, to a party requesting it, who shall complete it before service.

B. Service.

1. A subpoena may be served by any person who is not a party and is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the state or an officer or agency thereof, fees and mileage need not be tendered. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 43(C).

2. A subpoena may be served anywhere within the state.

3. Proof of service when necessary shall be made by filing with the clerk of the court of the county in which the case is pending a statement of the date and manner of service and of the names of the persons served, certified by the person who made service.

C. Protection of Persons Subject to Subpoenas.

1. *Sanctions.* A party or an attorney responsible for the service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The superior court of the county where the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

2. *Personal Appearance; Objections.*

a. A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

b. Subject to subdivision D(2), the recipient may, within fourteen (14) days after the service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or inspection of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court from which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the recipient, may move at any time for an order to compel the production or inspection. Such an order to compel production or inspection shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

3. *Quashing or Modifying Subpoena.* On timely motion, the superior court of the county in which the case is pending or from which a subpoena was issued may quash or modify the subpoena if it:

a. fails to allow reasonable time for compliance;

b. requires a person who is not a party or an officer of a party to travel to a place other than the county in which the person resides or transacts business in person or is served with a subpoena, or within forty (40) miles from the place of service, or such other convenient place fixed by an order of court, except that, subject to the provisions of subdivision C(3)(g), such a person may in order to attend trial be commanded to travel from any such place within the state or appear by electronic means, as approved by the court;

c. requires disclosure of privileged or other protected matter and no exception or waiver applies;

d. subjects a person to undue burden;

e. requires disclosure of a trade secret or other confidential research, development, or commercial information;

f. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

g. requires a person who is not a party or an officer of a party to incur substantial travel expense.

D. Duties in Responding to Subpoena.

1. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

2. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made in writing and shall be supported by a description of the nature of the documents, communications, or things not produced, sufficient to enable the demanding party to contest the claim.

E. Contempt. Failure of any person, without adequate cause, to obey a subpoena properly served may be deemed a contempt of the superior court of the county from which the subpoena issued. Adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided by subdivision A(1)(d)(2).

F. Failure to Produce Documentary Evidence. Upon failure to produce documentary evidence as provided in this rule, secondary evidence of the books, papers, documents or tangible things may be offered at trial.

G. ADA Notification. The subpoena shall state that "Requests for reasonable accommodation for a person~~s~~ with a disability~~ies~~ must be made to the court by or on behalf of ~~parties~~ the person requesting accommodation~~s~~ at least three (3) working days in advance of a scheduled court proceeding."

H. Service on Other Parties. Unless otherwise stipulated or ordered by the court, documents obtained by subpoena shall be copied or made available to the other parties, whether or not intended to be used at trial, not later than fourteen (14) days after receipt of the documents. In the event the trial or hearing is set in fewer than fourteen (14) days after receipt of the documents, disclosure shall be made not later than three (3) days prior to the trial or hearing. The cost to copy the subpoenaed documents for another party initially shall be paid by such other party, subject to further order of the court.

COMMITTEE COMMENT

This rule is based on Rule 45, *Arizona Rules of Civil Procedure*.

Rule 53. Protective Orders Regarding Discovery Requests

A. Protection of Persons Subject to Discovery Request. Subject to paragraph B ~~of this rule~~, upon motion by a party or by the person from whom discovery or disclosure is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

1. that the discovery or disclosure not be had;

2. that the discovery or disclosure may be had only on specified terms and conditions, including a designation of the time or place;

3. that the discovery or disclosure may be had only by a method of discovery or disclosure other than that selected by the party seeking discovery or disclosure;

4. that certain matters not be inquired into, or that the scope of the discovery or disclosure be limited to certain matters;

5. that discovery or disclosure be conducted with no one present except persons designated by the court;

6. that a deposition~~, after being sealed,~~ be sealed and thereafter opened only by order of the court;

7. ~~that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court~~ that documents or information specified by the court be submitted to the court in sealed envelopes for the court's *in camera* review and disseminated as thereafter directed by the court. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order ~~that~~ any party or person to provide or permit discovery or disclosure. The provisions of Rule 65(A)(4) apply to the award of expenses incurred in relation to the motion.

B. Confidentiality Order. Before entering an order in any way restricting a party or person from disclosing information or materials produced in discovery or disclosure to a person who is not a party to the litigation in which the information or materials are being discovered or disclosed, or denying an intervener's request for access to such discovery or disclosure materials, a court shall direct: (1) the party seeking confidentiality to show why a confidentiality order should be entered or continued; and (2) the party or intervener opposing confidentiality to show why a confidentiality order should be denied in whole or part, modified or vacated. The burden of showing good cause for an order shall remain with the movant. The court shall then make findings of fact concerning any relevant factors, including but not limited to: (1) any party's need to maintain the confidentiality of such information or materials; (2) any intervener's need to obtain access to such information or materials; and (3) any possible risk to the safety or financial welfare to which such information or materials may relate or reveal. Any order restricting release of such information or materials to nonparties or interveners shall use the least restrictive means to maintain any needed confidentiality. No such findings of fact are needed where the parties have stipulated to such an order or where a motion to intervene and to obtain access to materials subject to a confidentiality order are not opposed.

COMMITTEE COMMENT

This rule is based on Rule 26(c), *Arizona Rules of Civil Procedure*.

Rule 54. Depositions before Action or Pending Appeal

A. Before Action; Petition; Notice and Service; Order and Examination; Use of Deposition

1. A person who desires to perpetuate that person's own testimony or that of another person regarding any matter that may be cognizable in any court may file a verified petition in the superior court in the county of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show:

a. that the petitioner expects to be a party to an action cognizable in a court but is presently unable to bring it or cause it to be brought;

b. the subject matter of the expected action and the petitioner's interest therein;

c. the facts that the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it;

d. the names ~~or a description~~ if known, and, if the name is not known, a general description sufficient to identify the person or particular class or group to which the person belongs, and address of each ~~the~~ person~~s~~ the petitioner expects will be an adverse party ~~parties and their addresses so far as known~~; ~~and~~

e. the names if known, and, if the name is not known, a general description sufficient to identify the person or particular class or group to which the person belongs, and address~~es~~ of ~~the~~ each person~~s~~ to be examined and the substance of the testimony which the petitioner expects to elicit from each. The petition shall also ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

2. The petitioner shall ~~thereafter~~ serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty (20) days before the date of hearing the notice shall be served either within or without the state in the manner provided in Rule 41 or ~~Rule~~ 42 for service of summons, but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 41 or ~~Rule~~ 42, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent, the provisions of Rule 10(H) shall apply.

3. If the court ~~is satisfied~~ finds that the perpetuation of the testimony ~~may prevent~~ is proper to avoid a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. ~~The depositions may then be taken in accordance with these rules, and the court may make orders of the character provided for by Rules 62 and 63. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.~~ The depositions may then be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in pending actions and may be used in any action involving the same subject matter subsequently brought in accordance with the provisions of Rule 59(A).

4. ~~If a deposition to perpetuate testimony is taken under these rules, it may be used in any action involving the same subject matter subsequently brought, in accordance with the provisions of Rule 59(A).~~ Subject to the same requirements for the filing of a

verified petition, notice, hearing and finding of the court as set forth in paragraph A the court may make orders of the character provided for by Rules 62 and 63 prior to bringing an action.

5. Each reference in these rules to "the court in which the action is pending" shall, for the purpose of paragraph A, be deemed to refer to the court in which the petition referenced in this rule was filed.

B. Pending Appeal. If an appeal has been taken from a judgment of a superior court or before taking an appeal if the time therefore has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court. In such case the party who desires to perpetuate the testimony may make a motion in the court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the court. The motion shall show the names and addresses of the persons to be examined, the substance of the testimony which the party expects to elicit from each and the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examinations and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the superior court. Subject to the requirements set forth in this paragraph B for the taking of depositions the court may make orders of the character provided by for Rules 62 and 63 pending appeal ~~may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 62 and 63, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the superior court~~.

COMMITTEE COMMENT

This rule is based upon Rule 27, *Arizona Rules of Civil Procedure*.

Rule 55. Persons before Whom Depositions May Be Taken

A. Within the United States; Commission or Letters Rogatory. Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States, the State of Arizona, or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. Depositions may be taken in this state or anywhere upon notice provided by these rules without a commission, letters rogatory or other writ. The term "officer," as used in Rules 57, 58 and 59, includes a person appointed by the court or designated by the parties under Rule 56.

Upon proof that the notice to take a deposition outside this state has been given as provided by these rules, the party seeking such deposition may, but is not required, after one full day's notice to the other parties, have issued by the clerk, in the form given in such notice, a

commission or letters rogatory or other like writ either in lieu of the notice to take the deposition or supplementary thereto. Failure to file written objections to such form before or at the time of its issuance shall be a waiver of any objection thereto. Any objection shall be heard and determined forthwith by the court or judge thereof.

B. In Foreign Countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by the name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (here name the country)." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

C. Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

COMMITTEE COMMENT

This rule is based upon Rule 28, *Arizona Rules of Civil Procedure*.

Rule 56. Stipulations Regarding Discovery Procedure

Unless the court orders otherwise, the parties may by stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery, including extending the time provided in Rules 60, 61, 62, and 64 for responses to discovery.

COMMITTEE COMMENT

This rule is based upon Rule 29, *Arizona Rules of Civil Procedure*.

Rule 57. Depositions upon Oral Examination

A. When Depositions May Be Taken. After commencement of the action, the testimony of parties or their current spouses, or any expert witnesses expected to be called, may be taken by deposition upon oral examination. Depositions of document custodians may be taken to secure

production of documents and to establish evidentiary foundation. No other depositions shall be taken except upon: (1) agreement of all parties; (2) an order of the court following a motion demonstrating good cause; or (3) an order of the court following a Resolution Management Conference pursuant to Rule 76(A).

If the petitioner or other party seeks to take a deposition prior to the expiration of thirty (30) days after personal service or completion of service under Rule 42 of the summons and petition upon any respondent or other party ~~or service that is completed under Rule 42~~, leave of court, granted with or without notice, is required, except that leave is not required: (1) if a respondent or other party has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision B(2). The attendance of witnesses may be compelled by subpoena as provided in Rule 52. The deposition of a person in confinement may be taken only by leave of court on such terms as the court prescribes.

B. Notice of Examination; General Requirements; Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

1. Absent a stipulation of all parties to the action or an order of the court authorizing a briefer notice, a party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least ten (10) days prior to the date of the deposition. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena *duces tecum* is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

2. Leave of court is not required for the taking of a deposition by petitioner or other party initiating an action if the notice (a) states that the person to be examined is about to go out of the State of Arizona and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and (b) sets forth facts to support the statement. The petitioner's or other initiating party's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 31(A) are applicable to the certification. ~~If a party shows that when the party was served with notice under subdivision B(2) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.~~ If a party served with notice under this subdivision shows that said party was unable, through the exercise of reasonable diligence, to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.

3. The court may for cause shown enlarge or shorten the time for taking the deposition.

4. The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at the party's own expense. Any changes made by the witness, the witness' signature identifying the deposition as the witness' own, or the statement of the officer that is required if the witness does not sign as provided in paragraph E, and the certification of the officer required by paragraph F shall be set forth in a writing to accompany a deposition recorded by non-stenographic means.

5. The notice to a party deponent may be accompanied by a request made in compliance with Rule 62 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 62 shall apply to the request.

6. A party may, in the party's notice, name as the deponent a public or private corporation, a partnership, an association, or a governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which that person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision B(6) does not preclude taking a deposition by any other procedure authorized in these rules.

7. The parties may stipulate or the court may order that a deposition be taken by telephone. For the purpose of this rule and Rules ~~55(A), 65(A)(1), 52(C)(3), and 52(E),~~ 52(C)(3), 52(E), 55(A), and 65(A)(1) a deposition is taken in the county where the deponent is to answer questions propounded to the deponent.

C. Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 2(B). The examination shall commence at the time and place specified in the notice or within thirty (30) minutes thereafter and, unless otherwise stipulated or ordered, will be continued on successive days, except Saturdays, Sundays and legal holidays, until completed. Any party not present within thirty (30) minutes following the time specified in the notice of taking deposition waives any objection that the deposition was taken without that party's presence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. If the deposition is taken telephonically and the witness is not physically in the presence of the officer before whom the deposition is to be taken, the officer may nonetheless place the witness under oath with the same force and effect as if the witness were physically present before the officer. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision B(4). If requested by one of the parties, the testimony shall be transcribed. If the testimony is transcribed, the party noticing

the deposition or the party causing the deposition to be taken shall be responsible for the cost of the original transcript.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. The court shall ~~assess an appropriate~~ impose sanctions~~, including a sanction provided for under~~ pursuant to Rule 76(D)~~, against any party or attorney who has engaged in~~ for unreasonable, groundless, abusive or obstructionist conduct. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

D. Length of Deposition; Motion to Terminate or Limit Examination. Depositions shall be of reasonable length. The oral deposition of any party or witness, including expert witnesses, whenever taken, shall not exceed four (4) hours in length, except pursuant to stipulation of the parties or upon motion and a showing of good cause. The court shall impose sanctions pursuant to Rule 76(D) for unreasonable, groundless, abusive or obstructionist conduct.

At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 53. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon ~~demand~~ request of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion and for issuance of an order. The provisions of Rule 65(A)(4) apply to the award of expenses incurred in relation to the motion.

E. Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within thirty (30) days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 59(D)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

F. Certification and Filing by Officer; Exhibits; Copies; Notice of Filing; Preservation of Verbatim Recording of Depositions.

1. The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (1) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (2) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

2. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

3. The officer shall retain all original stenographic notes and tapes of any deposition and a copy of the recording of any deposition taken by another method in such place and manner as to ensure their availability to the court or any party upon request. In no event, however, shall such original notes or stenographic tapes be retained in any location outside the State of Arizona. The officer shall retain stenographic notes, tapes, and copies of recordings taken by another method according to records retention and disposition schedules and purge lists adopted by the Supreme Court.

G. Failure to Attend or to Serve Subpoena; Expenses.

1. If the party giving the notice of the taking of a deposition fails to attend and proceed therewith, and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

2. If the party giving the notice of the taking of a deposition of a non-party witness fails to serve a subpoena upon the witness, and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorneys' fees.

COMMITTEE COMMENT

This rule is based upon Rule 30, *Arizona Rules of Civil Procedure*.

Rule 58. Depositions upon Written Questions

A. Serving Questions; Notice. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 52. The deposition of a person in confinement may be taken only by leave of court on such terms as the court prescribes. A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 57(B)(6). Within thirty (30) days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten (10) days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ten (10) days after being served with redirect questions, a party may serve re-cross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

B. Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 57(C), (E), and (F), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

COMMITTEE COMMENT

This rule is based upon Rule 31, *Arizona Rules of Civil Procedure*.

Rule 59. Use of Depositions in Court Proceedings

A. Use of Depositions. At the trial or at any hearing ~~any part or~~ all or any part of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, and had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. The party who seeks admission of said testimony by deposition may do so without proof of the deponent's unavailability to testify at trial. Nothing contained in this rule shall be construed to limit in any way the right of any party to call the deposed witness to testify in person at trial or hearing.

If only part of a deposition is offered in evidence by a party, the court may require the offeror to introduce contemporaneously any other part which ought in fairness to be considered together with the part introduced.

Substitution of parties pursuant to Rule 37 does not affect the right to use depositions previously taken. When an action has been brought in any court of the United States or of any

state, and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefore. A deposition previously taken may also be used as permitted by Rule 2(B) of these rules.

B. Objections to Admissibility. Subject to the provisions of Rule 55(B) and subdivision (D)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason that would require the exclusion of the evidence if the witness were then present and testifying.

C. Form of Presentation. A party offering deposition testimony may offer it in the form permitted by Rules 57(B)(4) and (C). A party intending to offer deposition testimony at trial or hearing shall designate the portions to be offered by page and line reference and the party or parties against whom they will be offered. This designation shall be made in any pretrial or pre-hearing statement required by the court. If deposition testimony is offered in any form for any purpose, the offering party shall provide the court with a transcript of the portions offered.

D. Effect of Errors and Irregularities in Depositions.

1. *As to Notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

2. *As to Disqualification of Officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

3. *As to Taking of Deposition.*

a. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

b. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

c. Objections to the form of written questions submitted under Rule 58 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five (5) days after service of the last questions authorized.

d. Objections to the form of the question or responsiveness of the answer shall be concise, and shall not suggest answers to the witness. No specification of the defect in the form of the question or the answer shall be stated unless

requested by the party propounding the question. Argumentative interruptions shall not be permitted.

e. Continuous and unwarranted off the record conferences between the deponent and counsel following the propounding of questions and prior to the answer or at any time during the deposition are prohibited. This conduct is subject to the proscriptions of subdivision D(3)(d) and the sanctions prescribed in Rule 65.

4. *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 57 and 58 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

COMMITTEE COMMENT

This rule is based upon Rule 32, *Arizona Rules of Civil Procedure*.

Rule 60. Interrogatories to Parties

A. Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served without leave of court upon the petitioner after commencement of the action and upon any other party with or after service of the summons and petition upon that party. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The answering party ~~upon whom the interrogatories have been served~~ shall serve a copy of the answers, and objections if any, within forty (40) days after the service of the interrogatories, except that a respondent may serve answers or objections within sixty (60) days after service of the summons and petition upon that ~~defendant~~ respondent, or execution of a waiver of service, by that respondent. The court may allow a shorter or longer time. The party ~~submitting~~ propounding the interrogatories may ~~move~~ apply for an order under Rule 65(A) with respect to any objection to or other failure to answer an interrogatory.

B. Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 51(B), and the answers may be used to the extent permitted by Rule 2(B) ~~of these rules~~. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be

answered until after designated discovery has been completed or until a pretrial conference or other later time.

C. Option to Produce Business, Medical, Therapeutic, Psychological, Psychiatric, Employment, and Income Tax or Education Records. Where the answer to an interrogatory may be derived or ascertained from the business, medical, therapeutic, psychological, psychiatric, employment, ~~and~~ income tax or education records of the answering party ~~upon whom the interrogatory has been served~~ or that party's minor child or children, or from an examination, audit, or inspection of such business, medical, therapeutic, psychological, psychiatric, employment, ~~and~~ income tax or education records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party ~~serving~~ propounding the interrogatory as for the answering party ~~served~~, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford ~~to~~ the propounding party ~~serving the interrogatory~~ reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the ~~interrogating~~ propounding party to locate and to identify, as readily as can the answering party ~~served~~, the records from which the answer may be derived or ascertained. The answering party ~~responding~~ to the interrogatory shall provide appropriate and specific signed releases to the propounding party authorizing that party's access to the specific information.

COMMITTEE COMMENT

This rule is based upon Rule 33, *Arizona Rules of Civil Procedure*.

Rule 61. Uniform and Non-Uniform Interrogatories; Limitations; Procedure

A. Presumptive Limitations. Except as provided in these rules, a party shall not serve upon any other party more than forty (40) interrogatories, which may be any combination of uniform or non-uniform interrogatories. Any uniform interrogatory and its subparts shall be counted as one interrogatory. Any subpart to a non-uniform interrogatory shall be considered as a separate interrogatory.

B. Stipulations to Serve Additional Interrogatories. If a party believes that good cause exists for the service of more than forty (40) interrogatories upon any other party, that party shall consult with the party upon whom the additional interrogatories would be served and attempt to secure a written stipulation as to the number of additional interrogatories that may be served.

C. Leave of Court to Serve Additional Interrogatories. If a stipulation permitting the service of additional interrogatories is not secured, a party desiring to serve additional interrogatories may do so only by leave of court. Upon written motion or application showing good cause therefore, the court in its discretion may grant to a party leave to serve a reasonable number of additional interrogatories upon any other party. The party seeking leave to serve additional interrogatories shall have the burden of establishing that the issues presented in the action warrant the service of additional interrogatories, or that such additional interrogatories are a more practical or less burdensome method of obtaining the information sought, or other good cause therefor. No such motion or application may be heard or considered by the court unless

accompanied by the proposed additional interrogatories to be served, and by the certification of counsel required by Rule 65(A)(2)(c). The proposed additional interrogatories shall only be attached to the judge's copy of the motion and the copy served on opposing parties.

D. Spacing. Whenever interrogatories are used, a space sufficient for the answer shall be left immediately below the question. The answering party shall insert the answer in the space below each interrogatory, or if it requires more space, on a separate sheet which restates the question before giving the answer.

E. Non-uniform Interrogatories. The method of propounding and answering Non-Uniform Interrogatories shall be as follows.

1. ~~A~~ The party propounding interrogatories, other than Uniform Interrogatories, shall serve upon the answering party, and not the clerk of the court, the original and one (1) copy of the interrogatories and shall serve a copy upon every other party.

2. The answering party shall, within the time permitted by law, serve upon the propounding party and all other parties one copy of the interrogatories and answers.

F. Uniform Interrogatories. The Uniform Family Law I~~i~~nterrogatories set forth in ~~Rule 97,~~ Form 7~~, titled,~~ are approved for use by counsel as a standard or guide in accordance with ~~preparation by counsel of interrogatories under~~ Rule 60. ~~The use of Uniform Interrogatories shall be governed by Rule 60 and this rule.~~ The use of Uniform Interrogatories is not mandatory and should serve as a guide only. They are not to be used as a standard set of interrogatories for submission in all cases. Each interrogatory should be used only where it fits the particular case. The method of propounding and answering Uniform Interrogatories shall be as follows:

1. A party propounding Uniform Interrogatories shall serve a copy of a Notice of Service of Uniform Interrogatories upon each other party to the action.

2. The Notice of Service of Uniform Interrogatories shall contain the names of the party and attorney to whom the request is made and each uniform interrogatory for which the propounding party requests an answer.

3. The answering party shall:

a. insert the answer below the propounded interrogatory; and

b. serve the original upon the propounding party and a copy upon all other parties.

COMMITTEE COMMENT

This rule is based upon Rule 33.1, *Arizona Rules of Civil Procedure*.

Rule 62. Production of Documents and Things and Entry upon Land for Inspection and Other Purposes

A. Scope. Any party may serve on any other party requests (1) to produce and permit the party making the request, or someone acting on the requester's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, translated through detection devices into reasonable usable form when translation is practicably necessary) or to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of Rule 51(B) and that are in the possession, custody, or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, appraising, inventorying personal property, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 51(B).

B. Procedure and Limitations. The requests may, without leave of court, be served upon the petitioner after commencement of the action and upon any other party with or after service of the summons and petition upon that party. The requests shall set forth the items to be inspected, either by individual item or by specific category, and describe each item and specific category with reasonable particularity. The request(s) shall not, without leave of court, cumulatively include more than ten (10) distinct items or specific categories of items. Each request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. If a party believes that good cause exists for more than ten (10) distinct items or categories of items, that party shall consult with the party upon whom a request would be served and attempt to secure a written stipulation to that effect. The party upon whom a request is served shall serve a written response within forty (40) days after the service of the request, except that a respondent may serve a response within sixty (60) days after service of the summons and petition upon that respondent, or execution of a waiver of service by that respondent. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting a request may move for an order under Rule 65(A) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produced documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

C. Document Organization. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

~~C.~~ **D. Persons not Parties.** A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in ~~Rule 52~~ this rule.

COMMITTEE COMMENT

This rule is based upon Rule 34, *Arizona Rules of Civil Procedure*.

Rule 63. Physical, Mental and Vocational Evaluations of Persons

A. Order for Evaluation. When the mental, physical, or vocational condition of a party or any other person is in controversy, the court may order that person to submit to a physical, mental, or vocational evaluation by a designated expert or to produce for evaluation the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be evaluated (unless the person to be evaluated is a minor child of one or both of the parties), and to all parties and shall specify the time, place, manner, conditions, and scope of the evaluation and the person or persons by whom it is to be made. The person to be evaluated shall have the right to have a representative present during the evaluation, unless the presence of that representative may adversely affect the outcome of the evaluation. The person to be evaluated shall have the right to record by audiotape any physical evaluation. A mental or vocational evaluation may be recorded by audiotape, unless such recording may adversely affect the outcome of the evaluation. A copy of any record made of a physical, mental, or vocational evaluation shall be provided to any party upon request.

B. Report of Evaluator.

1. If requested by the party against whom an order is made under paragraph A or the person evaluated, the party causing the evaluation to be made shall deliver to the requester, within twenty (20) days of the evaluation, a copy of the detailed written report of the evaluator setting out the evaluator's findings, including the results of all tests made, diagnoses and conditions, together with like reports of all earlier evaluations of the same condition and copies of all written or recorded notes filled out by the evaluator and the person evaluated at the time of the evaluation, providing access to the original written or recorded notes for purposes of comparing same with the copies. After delivery the party causing the evaluation shall be entitled upon request to receive from the party against whom the order is made a like report of any evaluation, previously or thereafter made, of the same condition, unless, in the case of a report of evaluation of a person not a party, the party shows that such party is unable to obtain it. The court, on motion, may order a party to deliver a report on such terms as are just, and if any expert fails or refuses to make a report the court may exclude the expert’s testimony.

2. By requesting and obtaining a report of the evaluation so ordered or by taking the deposition of the evaluator, the party evaluated waives any privilege the party may have in that action, or any other involving the same controversy, regarding the testimony of every other person who has evaluated or may thereafter evaluate the party in respect of the same mental, physical or vocational condition.

3. Paragraph B applies to evaluations made by agreement of the parties, unless the agreement expressly provides otherwise. Paragraph B does not preclude discovery of a report of any expert or the taking of a deposition of any expert in accordance with the provisions of any other rule.

C. Alternate Procedure; Notice of Evaluation; Objections.

1. When the parties agree that a mental, physical, or vocational evaluation is appropriate but do not agree as to the evaluator, the party desiring the evaluation may

seek it by giving reasonable notice in writing to every other party to the action not less than thirty (30) days in advance. The notice shall specify the name of the person to be evaluated, the time, place and scope of the evaluation, and the person or persons by whom it is to be made. The person to be physically evaluated shall have the right to have a representative present during the evaluation, unless the presence of that representative may adversely affect the outcome of the evaluation. The person to be evaluated shall have the right to record by audiotape any physical evaluation. A mental or vocational evaluation may be recorded by audiotape, unless such recording may adversely affect the outcome of the evaluation. Upon good cause shown, a physical, mental, or vocational evaluation may be video-recorded. A copy of any record made of a physical, mental, or vocational evaluation shall be provided to any party upon request.

2. Upon motion by a party or by the person to be evaluated, and for good cause shown, the court in which the action is pending may, in addition to other orders appropriate under paragraph A, order that the evaluation be made by an expert other than the one specified in the notice. If a party after being served with a proper notice under this subdivision does not make a motion under this rule and fails to appear for the evaluation or to produce for the evaluation the person in the party's custody or legal control, the court in which the action is pending may, on motion, make such orders in regard to the failure as are just, such as those specified in Rule 65(D).

3. The provisions of paragraph B shall apply to an evaluation made under this paragraph C.

COMMITTEE COMMENT

This rule is based upon Rule 35, *Arizona Rules of Civil Procedure*.

Rule 64. Requests for Admission

A. Request for Admission Regarding Authenticity of Documents. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 51(B) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request. The request may, without leave of court, be served upon the petitioner after commencement of the action and upon any other party with or after service of the summons and petition upon that party. Each matter for which an admission is requested shall be separately set forth. The matter is admitted unless, within forty (40) days after service of the request, or, in the case of a respondent, within sixty (60) days after service of the summons and petition upon that respondent or execution of a waiver of service by that respondent, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the authenticity of any document of documents or set forth in detail the reasons why the answering party cannot truthfully admit or deny the request. A denial

shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter for which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter for which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 65(C), deny the matter or set forth reasons why the party cannot admit or deny it. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial.

B. Procedure. Each request shall contain only one (1) request for genuineness of all documents or categories of documents. Each party shall be entitled to submit no more than twenty-five (25) requests in any case without leave of court, except upon agreement of all parties or upon order of the court for good cause shown.

C. Effect of Admission. Any matter admitted under this rule is conclusively established unless the court for good cause shown permits withdrawal or amendment of the admission. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose, nor may it be used against the party in any other proceeding.

COMMITTEE COMMENT

This rule is based upon Rule 36, *Arizona Rules of Civil Procedure*.

Rule 65. Failure to Make Disclosure or Discovery; Sanctions

A. Motion for Order Compelling Disclosure or Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows.

1. *Appropriate Court.* An application for an order to a party may be made to the court in the county in which the action is pending, or, in matters relating to a deposition, to the court in the county where the deposition is being taken. An application for an order to a person who is not a party shall be made to the court in the county where the discovery is being, or is to be, taken.

2. *Motion.*

a. If a party fails to make a disclosure required by Rule 49 or 50, any other party may move to compel disclosure and for appropriate sanctions.

b. If a deponent fails to answer a question propounded or submitted under Rule 57 or 58, or a corporation or other entity fails to make a designation under Rule 57(B)(6) or 58(A), or a party fails to answer an interrogatory submitted under Rule 60, or if a party, in response to a request for inspection submitted under Rule 61, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

c. No motion brought under this rule will be considered or hearing scheduled thereon unless a ~~separate~~ statement of the moving party is ~~attached thereto~~ included in the motion certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter.

3. *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this ~~subdivision~~ rule an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

4. *Expenses and Sanctions.*

a. If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay the moving party the reasonable expenses incurred in making the motion, including attorneys' fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified or that other circumstances make an award of expenses unjust.

b. If the motion is denied, the court may enter any protective order authorized under Rule 53 and shall, after affording an opportunity to be heard, require the ~~moving party~~ movant or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

c. If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 53 and may, after affording an

opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

B. Failure to Comply with Order.

1. *Sanctions by court in county where deposition is taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

2. *Sanctions by court in which action is pending.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 57(B)(6) or 58(A) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under paragraph A or Rule 63, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

a. an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action, in accordance with the claim of the party obtaining the order;

b. an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

c. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

d. in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders, except an order to submit to a physical or mental examination;

e. ~~where~~ a party ~~has failed~~ who fails to comply with an order under Rule 63(A) requiring that party to produce another for examination~~, such orders as are~~ is subject to the sanctions listed in subdivisions 2(a), (b), and (c) ~~of this rule~~, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorneys' fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

C. Failure to Disclose; False or Misleading Disclosure; Untimely Disclosure.

1. A party who fails to timely disclose information required by Rule 49 or 50 shall not, unless such failure is harmless, be permitted to use as evidence at trial, at a hearing, or ~~on a~~ in support of a motion, the information or the testimony of a witness not disclosed, except by leave of court for good cause shown. A party or attorney who makes a disclosure pursuant to Rule 49 or 50 that the party or attorney knew or should have known was inaccurate or incomplete and thereby causes an opposing party to engage in investigation or discovery, shall be ordered by the court to reimburse the opposing party for the cost, including attorneys' fees, of such investigation or discovery. In addition to or in lieu of these sanctions, the court on motion of a party or on the court's own motion, and after affording an opportunity to be heard, may impose other appropriate sanctions~~. In addition to requiring payment of reasonable expenses, including attorneys' fees, caused by the failure, these sanctions~~ which may include any of ~~the actions~~ those authorized under subdivisions B(2)(a), (b), and (c)~~ under paragraph B and may include informing the jury of the failure to make the disclosure~~.

2. A party seeking to use information that that party first disclosed later than thirty (30) days before trial must obtain leave of court by motion, supported by affidavit, to extend the time for disclosure. Such information shall not be used unless the motion establishes and the court finds:

a. that the information would be allowed under the standards of subdivision C(1), notwithstanding the short time remaining before trial; and

b. that the information was disclosed as soon as practicable after its discovery.

3. A party seeking to use information that that party first disclosed during trial must obtain leave of court by motion, supported by affidavit, to extend the time for disclosure. Such information shall not be used unless the motion establishes and the court finds:

a. that the information could not have been discovered and disclosed earlier even with due diligence; and

b. that the information was disclosed immediately upon its discovery**.**

D. Failure to Disclose Unfavorable Information. A party's or attorney's knowing failure to timely disclose damaging or unfavorable information, as required pursuant to Rules 49 and 50 or in response to discovery propounded pursuant to these rules, shall be grounds for imposition of sanctions, in the court's discretion, up to and including dismissal of the claim or defense.

COMMITTEE COMMENT

This rule is based upon Rule 37, *Arizona Rules of Civil Procedure*.

VIII. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION (ADR)

Rule 66. Alternative Dispute Resolution: Purpose, Definitions, Initiation, and Duty

A. Purpose. The intent of this section is to encourage the resolution of family law cases using non-adversarial means of alternative dispute resolution (ADR) to the greatest extent possible, whether through a program overseen, administered, or authorized by the court, or by a person or agency independent of the court. Mediation independent of the court is encouraged.

B. Definitions. The court may provide or authorize ADR processes, which may include, but are not necessarily limited to, the following:

1. *"Arbitration"* means a process in which parties agree to submit the issue(s) in the dispute to a neutral third party or parties retained by the parties for a binding decision, in accordance with the Arizona Arbitration Act, *A.R.S.* §§ 12-1501 to 1518.

2. *"Parenting Coordinator"* is a person appointed by the court to assist with implementation of court orders by making recommendations to the court regarding implementation, clarification, modification, and enforcement of custody and parenting time orders**.**

3. *"Family Law Master"* is a person appointed by the court, including a family law conference officer, to take evidence on one or more disputed issues and submit a report to the court containing findings of fact and conclusions of law.

4. *"Mediation"* means a voluntary confidential process in which parties enter into one or more private discussions with a neutral third party to resolve the dispute. Mediation can be conducted by a conciliation court counselor, a mediator assigned by the court from a court roster of mediators, or a private mediator retained by the parties.

5. *"Open Negotiation"* means a process of non-confidential negotiations between the parties conducted by a neutral third party (the negotiator) to attempt to resolve their dispute. In the event the parties are unable to resolve some or all of the issues in the dispute, the negotiator reports the disputed issues to the court.

6. *"Settlement Conference"* means a confidential process, except as provided in subdivision D(7) ~~of this rule~~, in which parties to a dispute meet with a judge, commissioner, or judge pro tempore acting as a neutral third party to engage in settlement discussions.

7. *"Other ADR Processes."* The court may create, administer, approve, or authorize other ADR processes designed to provide the parties, who are or have been involved in, or are contemplating the filing of a family law matter, with an opportunity to resolve their dispute without court litigation.

C. Initiation of ADR. Upon the court's own motion or the motion of any party, the court may direct the parties to participate in one or more ADR processes authorized by court rules or to a private dispute resolution process agreed upon by the parties.

D. Duty to Consider ADR. No later than ninety (90) days following the first appearance of a respondent, the parties shall confer, either in person or by telephone, about:

1. the possibilities for a prompt settlement or resolution of the case; and

2. whether they might benefit from participating in some alternative dispute resolution process, the type of process that would be most appropriate in their case, the selection of an ADR service provider, and the scheduling of the proceedings.

E. Duty to Attempt Settlement, Agree on ADR, and Report to Court. The attorneys of record and all unrepresented parties who have appeared in the case are jointly responsible for attempting in good faith to settle the case or agree on an ADR process and for reporting the outcome of their conference to the court. Within thirty (30) days after their conference or at the Resolution Management Conference, whichever is earlier, the parties shall inform the court~~,~~ ~~(~~using a statement substantially similar to ~~Rule 97,~~ Form 6, Joint Alternative Dispute Resolution Statement To The Court, ~~or a form substantially similar)~~ of the following:

1. if the parties have agreed to use a specific ADR process, the type of ADR process to be used, the name and address of the ADR service provider they will use, and the date by which the ADR proceedings are anticipated to be completed;

2. if the parties have not agreed to use a specific ADR process, the position of each party as to the type of ADR process appropriate for the case or, in the alternative, why ADR is not appropriate; and

3. if any party requests that the court conduct a conference to consider ADR.

F. Assistance in Choosing Appropriate ADR Process. Unless the parties have agreed to use a specific ADR process, the court may direct the parties, the attorneys for the parties and, if appropriate, representatives of the parties having authority to settle, to discuss with a court-appointed ADR specialist, either in person or by telephone, whether ADR is appropriate and the types of ADR processes that might benefit their case.

COMMITTEE COMMENT

This rule is based on Rule 16(g), *Arizona Rules of Civil Procedure*.

Rule 67. Mediation, Arbitration, Settlement Conferences, and Other Dispute Resolution Processes Outside of Conciliation Court Services

A. Confidentiality; *Ex parte* Communications. Mediation conferences shall be held in private, and all communications, verbal or written, shall be confidential. The mediator shall not file any written report or statement with the court, except as provided by subdivision B(6).

Unless specifically stated otherwise in these rules, the provisions of A.R.S. § 12-2238 shall apply to any mediation conference held in conformance with this rule. The mediator shall not have any *ex parte* communication with the judge or commissioner assigned to a case, except as provided in subdivision B(7). The mediator may not conduct any other form of dispute resolution process in the same case, unless agreed to by the parties and approved by the court.

B. Mediation. Any issues in dispute may be subject to mediation. Mediation may be conducted by a private mediator agreed upon by the parties, a mediator assigned by the court from a roster of mediators maintained by the court, or a mediator participating in an ADR process overseen, administered, or approved by the court.

1. *Private Mediation; Roster of Mediators.* The parties may select a private mediator by agreement. The parties or counsel, if any, shall sign and file with the court a written notice that private mediation will take place, stating the name of the mediator and date set for the initial mediation conference. The parties may request the court to choose an independent mediator from a list of mediators supplied by them or from a roster of mediators maintained by the court. The parties shall contract directly with the private mediator and be responsible for payment of the fees for such mediation. Unless the court orders or the parties agree otherwise, the cost of mediation shall be equally shared by the parties. The mediator may not conduct any subsequent family assessment or evaluation in the same case.

2. *Commencement of Mediation.* On its own motion, or on motion of either or both parties to a dispute, the court may order a matter referred to mediation. The court may decline to order a matter referred to mediation if it appears that mediation is inappropriate for reasons such as parental unfitness, substance abuse, mental incapacity, domestic violence, or other good cause, or that mediation will cause undue delay.

3. *Domestic Violence.*

a. In a proceeding concerning custody or parenting time of a child, if an order of protection is in effect involving the parties or there is a finding by the court of any conduct that would form the basis for an order of protection, the court may order mediation or refer the parties to mediation only if there are policies and procedures in place that protect the victim from harm, harassment, or intimidation.

b. Every party shall be notified in writing or orally in open court prior to mediation of the ability to request a waiver of mediation or to request that reasonable procedures be in place at the mediation to protect a victim of domestic violence, as determined by the court. Neither party shall be required to appear for mediation pending determination of this matter.

c. The mediator shall reject for mediation or terminate mediation in any case the mediator deems mediation to be inappropriate because of domestic violence.

4. *Prohibition against Default.* Upon entry of an order or referral to mediation, neither party to the dispute may apply for entry of default against the other party until the mediator files a report with the court advising the court that mediation has concluded, unless otherwise ordered by the court.

5. *Scheduling of Mediation Conferences; Persons Who May Attend.* When an order or referral to mediation has been entered, the mediator will schedule a conjoint or individual conference or conferences that each party must attend. No scheduled trial or hearing shall be continued for failure to complete mediation without order of the court. Counsel for a party shall not be excluded from a mediation conference unless agreed to by the party and counsel. When appropriate, the mediator may, in his or her sole discretion, permit persons other than a party and counsel to attend or participate in a mediation conference if they agree in writing to be bound by the confidentiality provisions of this rule.

6. *Pre-Mediation Statement.* The mediator may require the parties to prepare a Pre-Mediation Statement for the mediator setting forth the information contained in subdivision D(2). The court may impose sanctions as permitted by Rule 71(A) for failure of a party to submit a Pre-Mediation Statement as requested by the mediator. The Pre-Mediation Statement shall not be filed with the court.

7. *Report to the Court; Agreements.* If the court refers or orders a case to mediation, the parties shall notify the court that the mediation has concluded and advise the court of any agreements reached within ten (10) days after the conclusion of the mediation and not later than ten (10) days prior to the date set for trial or hearing. All binding agreements reached by the parties shall comply with Rule 69. As part of any agreement reached, the parties shall acknowledge that the agreement was entered into by them voluntarily and without undue influence, after full disclosure of all relevant facts and information, and is intended to be a final binding agreement pursuant to these rules, and that it is fair, equitable and in the best interests of the children. If no or partial agreement is reached during mediation, the mediator shall file a brief report with the court stating that the parties met and attempted to resolve their differences but the mediation was unsuccessful. The report shall also state any agreements reached and the issues remaining for resolution. The mediator shall not report the positions of the parties and shall not comment upon or offer any opinion about the position of any party. The mediator may also advise the court if the parties or the mediator believe that further mediation would be helpful ~~to resolving~~ in order to resolve the remaining issues.

8. *Failure to Appear.* After entry of an order referring a matter for mediation, the parties are required to appear at all mediation conferences scheduled by the mediator. If one or both parties fail to appear, the mediator shall report to the court the identity of each person who failed to appear, and the court may impose sanctions as permitted by Rule 71(A).

9. *Participation in the Process; Reports to the Court; Sanctions.* Although a party is required to appear for a mediation conference, participation in mediation is voluntary. The mediator may advise the court in writing about the schedule for mediation and any

procedural matter related to the mediation, so long as the substance of what was said or done by the parties or their counsel during mediation remains confidential. Other than reporting to the court about matters set forth in this rule, unless otherwise agreed by the parties or required or permitted by law, the mediator shall not report to the court about anything that was said or done before or during the mediation. For violation of this rule, the court may impose appropriate sanctions as permitted by Rule 71(A).

C. Arbitration. The parties may agree to arbitrate any and all issues in accordance with the Arizona Arbitration Act, A.R.S. §§ 12-1501 to 1518 or any other law permitting arbitration. The parties or counsel, if any, shall file with the court a written notice of their agreement to arbitrate some or all of the issues before the court, attaching their written agreement to arbitrate, stating the name of the arbitrator(s), and the date(s) of arbitration. The decision of the arbitrator(s) shall be submitted to the court for a determination that said decision conforms to statute for entry of a decree or other written orders in accordance therewith. The parties shall contract directly with the arbitrator(s) and be responsible for payment of any fees for such arbitration.

D. Settlement Conferences. Upon motion of any party, or upon the court's own motion, the court may direct the parties to attend a settlement conference. Upon agreement of the parties, the settlement conference may be conducted by the judge or commissioner presiding over the action. The court may direct that the settlement conference be conducted by another judge or commissioner of the court, or by a judge pro tempore as part of any ADR program overseen, administered, or authorized by the court.

1. *Procedures.* At the request of a party or on its own motion, the court may direct the parties, the attorneys for the parties, and any other person deemed necessary to facilitate settlement of the issues, to participate in the settlement conference. The court may enter an order setting the date for the conference and enter other orders appropriate under the circumstances of the case to facilitate the settlement conference.

2. *Memoranda.* Except as otherwise ordered by the court, at least one week before the settlement conference the parties shall furnish the settlement conference officer with their Settlement Conference Memoranda or a Pretrial Statement addressing the following:

a. a general description of the issues in dispute, the party's position on each issue and the evidence that will be presented to support the party's position;

b. where the issues involve financial matters, the memorandum shall include a current Affidavit of Financial Information, a list of outstanding debts and the party responsible for each debt, and an inventory of community or joint assets, including dates of acquisition, amounts of encumbrance, and present value;

c. a summary of the negotiations that have previously occurred; and

d. any other information the party believes will be helpful to the settlement of the issues.

The Settlement Conference Memorandum shall not be filed with the court.

3. *Ex Parte Communication.* At any settlement conference conducted pursuant to this rule, the court, with consent of all those participating in the conference, may engage in *ex parte* communication with the parties if the court determines that will facilitate the settlement of the case.

4. *Domestic Violence.* At the request of a party or on the court's own motion, in cases where there has been domestic violence between the parties, the court shall put reasonable procedures in place to protect the victim from harm, harassment, or intimidation.

5. *Agreements.* Any binding agreement that is reached by the parties shall comply with Rule 69. As part of any agreement reached, the parties shall acknowledge that the agreement was entered into by them voluntarily and without threat or undue influence after full disclosure of all relevant facts and information, that it is intended to be a final binding agreement pursuant to these rules, and that it is fair, equitable, and where there are minor children common to the parties, is in the best interests of the children. The judge, commissioner, or judge pro tempore conducting the settlement conference shall make any findings necessary to approve the agreement pursuant to A.R.S. § 25-317 and may sign any Decree of Dissolution presented that conforms to the agreements reached by the parties. Any Decree of Dissolution signed by a judge pro tempore in accordance with this rule shall have the same force and effect as a Decree signed by the judge or commissioner to whom the case is assigned.

6. *Failure to Appear.* The parties and counsel, if any, shall be required to appear in person at all settlement conferences scheduled. The court may impose sanctions as permitted by Rule 71 for failing to appear and participate in the settlement conference.

7. *Reports to the Court.* If no or partial agreement is reached in the settlement conference, the settlement conference judge or commissioner shall file a brief report with the court stating that the parties met and attempted to resolve their differences, but the settlement conference was unsuccessful. The report shall also state any agreements reached and the issues remaining for resolution. The settlement conference judge shall not report the positions of the parties and shall not comment upon or offer any opinion about the position of any party. The settlement conference judge or commissioner may also advise the court if the parties or the settlement conference judge or commissioner believe that a further settlement conference would be helpful to resolving the remaining issues.

E. Other Dispute Resolution Processes; Fees. The court may establish, approve, or administer other dispute resolution processes designed to assist the parties in resolving disputes without litigation through contested proceedings. Participants in an ADR service provided through the court may be charged a fee in accordance with the law.

COMMITTEE COMMENT

It is the intention of these drafters to create rules that encourage the use of alternative dispute resolution to resolve disputes in family law matters to the greatest extent possible. It is believed that ADR will assist in the effective management of the caseloads of the family court divisions and facilitate the resolution of family disputes. ADR services are usually less expensive, less time consuming and less traumatic than litigation. This rule is intended to establish a framework in which the parties are required to attend and voluntarily participate in the ADR process. Through their participation it is hoped that a mutually satisfactory resolution of the issues can be achieved. This rule is not intended to create, encourage, or result in ancillary court proceedings involving the motives, conduct or communications of the parties, unless otherwise required by law.

Rule 68. Conciliation Court Services; Counseling, Mandatory Mediation, Assessment or Evaluation and Other Services

A. Conciliation Counseling/Petition for Conciliation.

1. *Filing a Petition for Conciliation.* Either spouse may file a Petition for Conciliation pursuant to A.R.S. § 25-381.09 for the purpose of preserving the marriage or resolving controversies through counseling. The petition shall be filed with the clerk of the court or submitted directly to the conciliation court as provided by local rule or administrative order. When an action for dissolution, legal separation, or annulment is pending, the original Petition for Conciliation may be filed in the court file or in a separate file with a notice or minute entry of the filing of Petition for Conciliation filed in the court file as provided by local rule or ~~policy~~ administrative order. A copy of the Petition for Conciliation will be sent to conciliation court.

2. *Period of Jurisdiction; Stay of Proceedings; Temporary Orders.*

a. ~~When the conciliation court accepts~~ Upon the timely filing of a Petition for Conciliation, counseling shall be conducted and completed within sixty (60) days of the filing of the petition. During this time, no action for dissolution, legal separation, or annulment shall be filed and any pending action for dissolution, legal separation, or annulment is stayed, unless the court lifts the stay before the expiration of the sixty-day period.

b. There shall be no more than one (1) stay during any twelve-month period in any case.

c. During the stay, the court may proceed to hear and enforce Petitions for Orders of Protection pursuant to A.R.S. § 13-3602 and any requests for temporary orders as allowed by A.R.S. § 25-381.17.

3. *Petition Accepted; Subsequent Services.* Once a Petition for Conciliation has been accepted by the conciliation court, individual or conjoint appointments will be scheduled that each party must attend. The person who files the petition for conciliation

may withdraw the request with the approval of the conciliation court. Upon mutual agreement of the parties, jurisdiction may be extended while attempting reconciliation. Until the jurisdiction of the conciliation court has been terminated, the parties may not participate in ADR or evaluation services offered through the conciliation court.

4. *Outcome.* The conciliation court shall notify the assigned judge or presiding judge of the conciliation court when conciliation proceedings have been concluded and that it is recommended that the jurisdiction of the conciliation court be terminated. In addition, the judge shall be informed whether the petition was withdrawn, the petitioner or respondent failed to appear for a conference, or if a formal written agreement was reached and signed by both parties.

5. *Confidentiality.* All communications, both oral and written, shall be confidential and shall not be disclosed without the consent of the party making such communication, except as otherwise required by law.

B. Mediation/ADR. All family law cases that involve a controversy over child custody or parenting time shall be subject to mediation or other alternative dispute resolution or process provided for in local rules. Unless the parties agree to mediation by a private mediator, the court or conciliation services shall determine whether mediation or ADR services are appropriate in a particular case. The court or conciliation services may deem mediation inappropriate for reasons such as parental unfitness, substance abuse, mental incapacity, domestic violence, or other good cause. The mediator may not conduct any subsequent family assessment or evaluation in the same case.

1. *Commencement.* If there is a disagreement between the parties concerning child custody or parenting time, either or both parties may file a motion or request for mediation or ADR services with the clerk of the court. The requesting party shall provide a copy of the request to the assigned judge and the conciliation court. An order for mediation or ADR services may also be made on the court's own motion.

2. *Domestic Violence.*

a. In a proceeding concerning custody or parenting time of a child, if an order of protection is in effect involving the parties or there is a finding by the court of any conduct that would form the basis for an order of protection, the court may order mediation or ADR services or refer the parties to mediation only if there are policies and procedures in place that protect the victim from harm, harassment, or intimidation.

b. Every party shall be notified in writing or orally in open court prior to mediation or ADR services to request a waiver of mediation or to request that reasonable procedures be in place at the mediation to protect a victim of domestic violence as determined by the court or conciliation services. Neither party shall be required to appear for mediation pending determination of this matter.

c. Conciliation services shall reject for mediation or terminate mediation in any case if the mediator deems mediation to be inappropriate because of domestic violence.

3. *Confidentiality.* All communications, both oral and written, made by a party in mediation shall be confidential and not divulged to third parties, in accordance with Arizona statutes and court rules.

4. *Mediation Conferences.* When a matter has been ordered or referred to mediation, an individual or conjoint conference or conferences will be scheduled by Conciliation Services that each party must attend. The mediator shall be entitled to meet with either or both parties in a confidential conference to determine the appropriateness of mediation prior to commencement of the process. Counsel are not permitted to attend mediation conferences unless approved by the mediator or conciliation court policy. The mediator may permit any person to attend a conference that the mediator, in his or her sole discretion, believes is appropriate. Any person not a party to the action attending mediation shall sign an agreement to be bound by the confidentiality provisions of this rule.

5. *Reports to the Court.* At the conclusion of mediation by conciliation services, the mediator shall file a report with the court setting forth any agreements, full or partial, reached by the parties, and identifying the areas of disagreement, but shall not identify the parties' position regarding areas of disagreement. If no agreements are reached in mediation, the mediator's report to the court will advise the court only that the mediation was unsuccessful in resolving the dispute.

6. *Agreements, Signature of Counsel, Notice to Counsel, and Notice of Objection.* Any agreements reached as a result of mediation by conciliation services must be placed in writing, following either procedure set forth below.

a. The agreement shall be signed by the parties and signed and approved as to form by the attorneys, if any, and submitted to the court for approval no later than thirty (30) days from the date of signing.

b. Alternatively, the agreement shall be signed by the parties, and conciliation services shall submit a copy of the agreement to the parties' attorneys, who shall have thirty (30) days from the date of signing to file a Notice of Objection to the agreement, unless a different period is specified by the court or in correspondence transmitting the agreement. If no timely objection is filed, the agreement will be forwarded to the court with a proposed order for the court's consideration and signature. Any Notice of Objection to the Agreement must be filed with the court, a copy provided to conciliation services and the other party's attorney or, if the party is not represented, to the party. The Notice of Objection shall not state the reasons for the objections. Such objections shall, however, be set forth in separate correspondence to the party's attorney, or if the party is not represented, to the party. Upon receipt of a Notice of Objection, conciliation services will terminate the mediation and

issue a memorandum to the court indicating that as a result of the objection being received, there is no agreement in the matter.

c. The court shall retain final authority to accept, modify or reject or set further hearing on the agreement. Upon the entry of a written order by the court approving or modifying an agreement reached by the parties in mediation, it shall be considered binding.

~~7. *Failure to Appear.* The parties are required to appear at all scheduled mediation conferences. If one or both parties fail to appear, the mediator shall report to the court the identity of each person who failed to appear and the court may impose sanctions, as permitted by Rule 71(A).~~

C. Assessment or Evaluation.

1. *Referral by the Court.* The court may refer cases to conciliation services for assessment or evaluation regarding child custody or parenting time when the court believes it would be in the children's best interests.

2. *Scheduling.* Conciliation services shall notify the parties and counsel, if any, of all scheduled appointments. Counsel is not permitted to attend the assessment/evaluation unless it is deemed necessary by the evaluator for the success of the process. Appointments scheduled by conciliation services will not be rescheduled without good cause. All parties are required to appear at all scheduled assessment or evaluation appointments. If one or both parties fail to appear, the evaluator will not proceed but will report to the court the identity of each party who failed to appear and the court may sanction any party who fails to appear for an appointment. In the event the parties reach an agreement prior to the commencement of the assessment/evaluation, the parties or counsel, if any, must immediately notify the court and conciliation services of the agreement.

3. *Conducting the Assessment or Evaluation.* Conciliation services will conduct the assessment/evaluation according to standard practices regarding the best interest of the children and may conduct such interviews and review such materials as it deems appropriate, including, but not limited to, interviewing the parents jointly or individually, interviewing the children, and observing the parents and children in interaction. If either party submits documents to the evaluator for review, the party submitting the documents must promptly provide copies of all such documents to the other party or counsel. Conciliation services' assessment or evaluation files are confidential and may only be released by order of the assigned judge or the family court presiding judge.

4. *Report to the Court.* Upon completion of the assessment or evaluation, or upon the parties reaching an agreement regarding the child custody and parenting time issues in dispute, conciliation services will notify the court of completion of the assessment or evaluation and will provide the court with a written report. All evaluative reports generated by conciliation services shall be maintained as confidential but remain

available for appellate purposes. The parties or their counsel, if any, will be provided a copy of the report. The report may include recommendations to the court regarding child custody, parenting time or therapeutic interventions consistent with applicable law. Upon direction from the court, an evaluator may provide an oral report in open court in lieu of a written report.

5. *Court Testimony.* Conciliation services evaluators may appear in court proceedings or depositions at the request of a party only when properly and timely subpoenaed pursuant to these rules. Conciliation services evaluators may appear at deposition only upon the approval of the judge. The judge shall set reasonable limits with regard to the amount of time conciliation staff can be deposed, the nature of the questions, the location of the deposition, and the release of conciliation services files and records. The parties may stipulate before the evaluation or assessment is commenced that the evaluators not be called as witnesses in any court proceeding or be deposed, unless ordered by the court. If the parties enter into such a stipulation, this subsection shall not apply.

D. Family Education Services. The family court presiding judge or the presiding judge of the superior court may implement family education services that parties must attend as deemed appropriate.

E. Other Services; Fees. Conciliation services may approve, establish, or administer other services designed to assist the parties or the court in resolving a dispute, including but not limited, to open negotiation, parenting conferences, or early post-decree conferences. Persons participating in services provided by conciliation services may be charged a fee. The fee may be deferred or waived pursuant to statute.

F. Failure to Appear. The parties are required to appear at all scheduled mediation conferences, open negotiations and other alternative dispute proceedings scheduled by Conciliation Services. If one or both parties fail to appear, the mediator shall report to the court the identity of each person who failed to appear and the court may impose sanctions, as permitted by Rule 71(A).

COMMITTEE COMMENT

The purpose of subdivision B(2) is to ensure that all counties have sufficient policies and procedures to protect victims of domestic violence participating in mediation and ADR processes through the court and conciliation services. These procedures and policies should include screening cases for appropriateness for mediation where there has been domestic violence between the parties and declining to conduct mediation where it is not appropriate. The procedures to protect victims from harm, harassment, or intimidation should include procedures to assist victims where there is a power disparity due to domestic violence. The court and conciliation services should consider the request of any party that mediation be waived if there is a history of domestic violence between the parties. Other examples of policies and procedures that the court or conciliation services could offer include separate waiting areas, telephonic

mediation, shuttle mediation, or parties appearing on separate days for mediation. This list is not intended to be viewed as mandatory or exhaustive.

Rule 69. Binding Agreements

Agreements between the parties shall be binding if they are in writing or if the agreements are made or confirmed on the record before a judge, commissioner, judge pro tempore, court reporter, or other person authorized by local rule or Administrative Order to accept such agreements.

COMMITTEE COMMENT

Arizona Constitution, Article 6, § 30 designates the superior court as a court of record. A proceeding or agreement is "on the record" if it is conducted or memorialized by a court reporter in accordance with A.R.S. § 12-221 to 12-225, ~~et seq.,~~ or if recorded by any recording device authorized by law. A.R.S. § 38-424 currently authorizes the use of "tape recorders or other recording devices in lieu of reporters or stenographers." This rule also contemplates that the parties may reach binding agreements at the time a deposition is conducted if both parties are present or represented by counsel, and the agreement is recited on the record. This rule is adapted from Rule 80(d), *Arizona Rules of Civil Procedure*.

Rule 70. Settlement

A. Notice of Settlement. It shall be the duty of counsel, or any party not represented by counsel, to give the judge or the commissioner assigned to the case or matter prompt notice of the settlement of any case or matter set for trial, hearing, conference, or argument. In the event of any unreasonable delay between the settlement and the giving of such notice, the court may impose sanctions against counsel or the parties to ensure future compliance with this rule.

B. Settlement Without Final Judgment. After a family law case has been set for trial or evidentiary hearing, and the parties have advised the trial court that the matter has been settled without presenting a final judgment, decree, or order to the court, the case or petition shall be dismissed without further notice unless a final judgment, decree, or order is filed and entered of record within forty-five (45) days from the notice to the court. In the alternative, the court may require the parties to place their agreement on the record in accordance with Rule 69 at or before the time set for trial or evidentiary hearing, or make such other orders as are reasonable under the circumstances to ensure that a final judgment, decree, or order is entered.

COMMITTEE COMMENT

Paragraph A ~~of this rule~~ is based on Rule 5.1(c), *Arizona Rules of Civil Procedure*.

Rule 71. Sanctions; Sealing

A. Sanctions. If a party or attorney fails to comply with these rules, upon motion of a party or on the court's own initiative, the court shall, except upon a showing of good cause, make such orders with regard to such conduct as are just, including, among others, an order refusing to

allow the disobedient party to support or oppose a designated claim or defense, prohibiting a party from introducing designated matters in evidence, staying further proceedings until an order entered by the court is obeyed, dismissing a claim, reassignment of the case to a deferred position on the active calendar, assignment to the inactive calendar, finding of contempt of court, or rendering a default judgment against the disobedient party. In lieu of or in addition to any other sanction, the judge shall require the party, or the attorney representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorneys' fees, or payment of an assessment to the clerk of the court, or both, unless the judge finds that the noncompliance was substantially justified, or that other circumstances make an award of expenses unjust.

B. Sealing the File. Upon request of any court appointed professional, the court may seal any file or portion thereof that the court finds to contain any defamatory information about the court appointed professional.

COMMITTEE COMMENT

This rule is based on Rule 16(f), *Arizona Rules of Civil Procedure*.

Rule 72. Family Law Master

A. Appointment and Compensation. Upon stipulation and application by the parties, or on the court's own motion, the court may appoint a family law master who is an attorney or other professional with education, experience, and special expertise regarding the particular issues to be referred to the master. The compensation to be allowed to a master shall be fixed by the court. The parties may stipulate to a particular family law master and the amount of compensation, but the court must approve the family law master and compensation, and the court shall review the qualifications of the family law master prior to appointment. Compensation of the family law master shall be allocated by the court and shall be treated as a taxable cost.

B. Powers. The order of reference appointing a family law master shall specify the particular issues referred to the family law master and shall fix the time and place for beginning and closing the hearings and for filing the master's report. The master may deal with any issues pursuant to Title 25, A.R.S., that could be presented to the assigned judge including post-decree matters. Subject to any limitations in the order, the master shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production of evidence upon all matters embraced in the reference. The master may rule upon the admissibility of evidence, unless otherwise directed by the order of reference, and has the authority to place witnesses under oath and may examine the parties and witnesses. When a party requests, the master shall cause a record to be made of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 104, *Arizona Rules of Evidence*, for a court sitting without a jury. The cost of the record shall be paid by the parties as allocated by the court and shall be a treated as a taxable cost.

C. Meetings. Upon receipt of an order of reference, the master shall set a time and place for the first meeting of the parties or their attorneys, to be held within twenty (20) days after the date

of the order of reference, and shall notify the parties. It is the duty of the master to proceed with all reasonable diligence. Unless stipulated otherwise, Rule 2(B) and these rules shall apply to all proceedings before the master. If a party fails to appear at the time and place appointed, the master may proceed *ex parte* or, in the master's discretion adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

D. Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 52. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished as for contempt and be subjected to the consequences, penalties, and remedies provided in Rules 65 and 52.

E. Report. The master shall prepare a report on the matters submitted to the master by the order of reference that includes requested findings of fact and conclusions of law concerning the disputed issues referred. Before filing the master's report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions. The master shall file the final report with the clerk of the court. Unless otherwise ordered by the order of reference, the master shall file with the clerk of the court any transcript of the proceedings prepared and with the evidence and original exhibits presented. The master shall mail a copy of the report to the parties on the same date the original report is filed with the clerk.

F. Objections. A party may object to the master's report by filing with the court a motion to modify or reject the master's report, as prescribed in Rule 35, no later than fifteen (15) days from the date of mailing of the master's report. Each objection shall be stated with specificity and shall reference the exhibits or portions of the record supporting the objection. Any response to an objection shall be filed no later than ten (10) days from the date the objection is mailed. No further pleadings shall be permitted without prior court order.

G. Court Actions. If no objection is filed by either party pursuant to this rule, the master's report shall become an order of the court, unless the court on its own motion sets a hearing upon a particular issue in the report within ten (10) days after the time for filing an objection has passed. If the master's report covers all issues in the case, and no objection is filed and the court does not set a hearing, the court shall enter judgment on the master's report. In the event any objection(s) are filed, the court may set oral argument on the objection(s), adopt the report, modify it, reject it in whole or in part or may receive further evidence. The court shall hold a hearing or enter an order in connection with any objection to the master's report within thirty (30) days of the filing of the response or other ordered pleading to such objection.

H. Stipulation as to Findings. At the time the master is appointed, the parties may stipulate that a master's findings of fact shall be final. When so stipulated, the court shall consider only questions of law arising from the master's report. Absent such a stipulation, the court shall not reverse the special master's findings of fact unless clearly erroneous and shall review conclusions of law *de novo*.

I. Sanctions. The court may impose sanctions upon any party or counsel for conduct occurring before the master or in conjunction with the master's proceedings or objections to the master's report that is done to harass, or to cause unnecessary delay, or needlessly increase the

cost of litigation. The master may also make recommendations for imposition of sanctions under these rules, case law, or statute.

J. Immunity. The family law master has immunity in accordance with Arizona law as to all acts undertaken pursuant to and consistent with the order of reference.

K. Applicability. No county is required to employ or utilize family law masters; however, in the event a county elects to use family law masters, these rules shall apply.

L. Retirement, Benefits, Stock Options, and other Employment Related Compensation. If an order of the court requires the division of retirement benefits, stock options or other employment related benefits the court shall require the appointment of an attorney or other professional with the appropriate expertise to carry out the division of retirement benefits, stock options or other employment related benefits. The court shall identify the specific asset to be so divided, whether a determination is to be made as to the community's interest in such assets and any other special determinations to be made. The court shall in addition to the powers specifically listed in this rule, provide that a family law master under this section shall have the power to require the production of documents, answers to interrogatories and to issue subpoenas to obtain any needed records and to take into account the availability of records and the cooperativeness of the parties in determining the parties' relative interests in such retirement benefits, stock options or other employment related benefits. The family law master under this section shall have the power to order the appearance of each party using the most recent address of a party that is available and can proceed to determine the parties' relative interests even if a party does not appear nor present to the court a position on the merits of the parties' claims or the terms of division of retirement benefits, stock options or other employment related benefits.

COMMITTEE COMMENT

This rule is based on Rule 53, *Arizona Rules of Civil Procedure* and is to be used for the same purposes as Rule 53. Depending on the issues, the master could be an attorney or a person with specialized knowledge on the issues referred to the family law master. A family law master may also be appointed to hear a pre-decree/pre-judgment or post-decree case in the same manner that a judge or arbitrator would hear a case, except that the trial court judge would have the final decision after receiving the master's report and ruling on any objections. Where the issues are ongoing enforcement of custody or parenting time orders or related issues, a Parenting Coordinator should be appointed instead of a family law master, pursuant to Rule 74.

Rule 73. Family Law Conference Officer

A. Definitions.

1. *Conference.* An alternative dispute resolution proceeding conducted by a conference officer to obtain information or agreements related to support (including spousal maintenance), custody and parenting time, property and debt issues and, ultimately, to assist the parties to memorialize any agreements, and make recommendations to the court regarding contested issues.

2. *Interim Order or Judgment.* An order issued by a judge or commissioner after reviewing the conference officer's report and recommendations. The parties have twenty-five (25) days from the date the order is filed by the clerk of the superior court to review and object to the interim order before it becomes a final judgment or order.

3. *IV-D Case.* A case brought by a IV-D agency or a IV-D participant to establish paternity, to establish, enforce, or modify support, or to enforce spousal support, where appropriate.

4. *Non-IV-D Case.* A case that is not brought by a IV-D agency or a IV-D participant to establish paternity, to establish, enforce, or modify support, or to enforce spousal support. These cases are also referred to as "private cases."

5. *Obligor.* A person ordered, by a court or administrative order, to make support payments.

6. *Paternity.* Determination of the father of a child or children born out of wedlock.

7. *Parenting Time.* Determination of the time children spend with each parent (or others ordered to have custody or control of a child or children under Arizona law) according to the best interests of the child(ren). This is also known as "visitation."

8. *Support.* The provision of maintenance or subsistence, including medical insurance coverage and uncovered medical costs for the child, arrears, interest on arrears, past support, interest on past support, and reimbursement for expended public assistance. For purposes of this rule, support may also include spousal maintenance.

9. *Property.* Determination of the separate and community interest of all parties in all real and personal property, and an appropriate affirmation or division of all property interests of the parties.

10. *Debt.* Determination of all separate and community debts and obligations of the parties, and an appropriate division and allocation of responsibility for all such debts and obligations.

B. Appointment. The presiding judge or his/her designee may appoint a conference officer to hold a conference and make recommendations and obtain agreements for disposition in both IV-D and private cases (non-IV-D) to establish, enforce, or modify support, or to enforce custody or parenting time (visitation), to affirm or divide property, and to determine and allocate responsibility for all debts. The conference officer is neutral and does not represent or advocate for either party. Except as provided in this rule, written qualifications for the position of conference officer, which at a minimum shall require a bachelor’s degree and shall include an

obligation to abide by the Code of Judicial Conduct, shall be established and on file with the administration office of the superior court. The conference officer shall also be required to attend forty (40) hours of basic mediation training within six (6) months of his or her hire date.

C. Powers and Duties.

1. *Establishment, enforcement or modification of support.* When establishment, enforcement or modification of support is at issue, the conference officer shall submit a written agreement signed by all parties or a report and recommendation that includes, as appropriate, any or all of the following: the agreements between the parties, recommendations concerning arrears or modification, assessments of circumstances concerning payment of present support.

2. *Enforcement of custody or parenting time (visitation).* When enforcement of custody or parenting time (visitation) are at issue, the conference officer may submit a written agreement signed by all parties or recommend any or all of the following: setting the case for evidentiary hearing; entering an order based on agreement of the parties; ordering specific relief; scheduling the case for a review hearing; referring the matter to case supervision, which may include counseling, substance abuse test monitoring, supervised parenting time or supervised exchange of the child(ren), or other appropriate programs; appointing a volunteer who is approved by all parties to supervise parenting time; referring the matter to a local social service agency to exercise continuing supervision of custody or parenting time terms, pending an evidentiary hearing; or ordering any other relief as appropriate (i.e. parent/child alienation education).

3. *Voluntary paternity.* When the parties agree regarding paternity, the conference officer shall prepare an agreement or acknowledgement of paternity and, where appropriate, an order of paternity and submit the documents to a proper official authorized by law to sign or enter the order of paternity.

4. *Division of Property and Debt.* When the parties agree on the designation or division of property interests as sole and separate or community property, or agree on the appropriate designation and allocation of separate or community debts, the conference officer may submit to an appropriate judicial officer a written agreement signed by all parties and an appropriate decree, judgment or order signed by all parties setting forth the parties' agreements.

D. Procedures.

1. *Conduct of Conference.* The conference officer may swear in or administer an oath to the parties and thereafter conduct the proceedings in an informal manner, giving all parties a full opportunity to present their positions. The conference officer may record the proceedings by audiotape or court reporter. If a party is represented by an attorney, the attorney may be present at the conference.

2. *Witnesses.* If there is a request to present witnesses at a conference where a recommendation may be made to the court, the conference officer will either allow the witnesses to testify or refer the matter to the assigned judge or commissioner for a hearing.

3. *Exhibits.* Documents presented at a conference where a recommendation may be made to the court will be reviewed by the conference officer and placed in the court's nonpublic working file and maintained in the file until the time frame of the objection period has expired. These documents will not be marked as exhibits and will not be part of the court's file. In the event of an objection, the documents will be provided to the court upon request.

4. *Stipulation and Order.* If the parties are in agreement on issues raised during the conference, the conference officer shall complete a stipulation, consent decree, consent judgment, written agreement, or order for signature by the parties or their attorneys. The conference officer shall forward the original signed documents and copies, as appropriate, to the judge or commissioner for signature.

5. *Recommendation of Conference Officer.* If the parties are unable to reach a full agreement on all issues, the conference officer may assist the parties in preparation of partial agreement and, if appropriate, recommend a disposition to the assigned judge or commissioner, continue the conference for good cause, or decline to proceed due to complexity of legal or factual issues and refer the matter to the assigned judge or commissioner for further action. The conference officer may also recommend that the judge or commissioner hold a trial or an evidentiary hearing, and, if authorized by a judge or commissioner, proceed to schedule and notify the parties of the trial date or evidentiary hearing date. The conference officer shall advise the parties of their right to object to any the conference officer's recommendations and to have a hearing upon request before a judge or commissioner concerning an objection.

6. *Decision by judge or commissioner.* The judge or commissioner, upon receipt of an agreement, consent decree, judgment or order, or a report and recommendation of a conference officer, may make determinations as to law and as to the findings of fact as follows:

a. enter an order of paternity, consent decree, consent judgment, or order approving agreements of the parties, as appropriate;

b. approve the recommendation and adopt it as an interim order of the court, subject to either party objecting or requesting a hearing within twenty-five (25) days from the date the order is filed by the clerk of the superior court;

c. modify the recommendation and adopt the modified recommendation as an interim order of the court, subject to either party objecting or requesting a hearing within twenty-five (25) days from the date the order is filed by the clerk of the superior court;

d. reject the recommendation in whole or in part and affirm the current order, subject to either party objecting or requesting a hearing within twenty-five (25) days from the date the order is filed by the clerk of the superior court; or

e. set a *de* novo hearing, a trial, or an evidentiary hearing on the assigned judge's or commissioner's calendar.

7. *Objection to Interim Order or Affirmation of Existing Order.* An objection to a recommendation of a conference officer shall be filed no later than twenty-five (25) days from the date the order is filed by the clerk of the superior court. A party who objects shall clearly state in writing the objection to the recommendation, the basis for the objection, a proposed solution, and whether a hearing is requested. The party shall file the original objection with the clerk of the superior court and timely provide copies to the other party or parties to the action, to the assigned judge or commissioner, to the conference officer, and in IV-D cases, to the Attorney General's office. The judge or commissioner shall review the objection and shall set a hearing if requested. If no hearing is requested, the judge or commissioner may rule on the objection without further hearing.

8. *Sanctions and defaults.* The court may assess sanctions against a party who objects to a recommendation or requests a hearing if the judge or commissioner finds that the objection(s) or request was made without reasonable belief in the merit of the grounds for the objection(s) or request, for the purpose of delay, or without other good cause. If the person upon whom an Order to Appear is served does not appear at the scheduled hearing or conference, a civil arrest warrant or a child support arrest warrant, as appropriate, may be issued, or a default judgment may be entered.

9. *Appeal time frame.* The appeal time frame begins when the interim order becomes a final, appealable order after the objection period if there has been no objection; or, if there has been an objection, following the court's ruling on the objection when a final, appealable order has been issued.

10. *Exceptions.* A conference officer may not conduct proceedings for which a hearing is required by statute, including denial of parenting time, license suspension, UCCJEA, or custody establishment or modifications, unless the hearing is waived.

E. Failure to Comply With Order to Bring Information.

1. *Support enforcement proceedings.* If a person does not provide information at the conference as ordered, the conference officer may:

a. if the obligor is the party who failed to comply by providing the requested information, make a recommendation to the court to hold the obligor in contempt until the obligor either produces the information or carries the burden of convincing the court that production of the information is not within the obligor's power;

b. proceed with the conference and make a recommendation to the court based upon the information presented at the conference; or,

c. make a recommendation to the court to impose such other sanctions as the court deems appropriate under the circumstances.

2. *Support modification proceedings.* If either party does not comply with an order to provide the information at the conference, the conference officer may:

a. proceed with the conference and make a recommendation to the court based upon the information presented at the conference; or

b. make a recommendation to the court to impose such sanctions as the court deems appropriate under the circumstances.

F. Immunity. A conference officer has immunity in accordance with Arizona law as to all acts undertaken pursuant to and consistent with this rule and orders of the court.

G. Applicability. No county is required to employ or utilize family law conference officers; however, in the event a county elects to use family law conference officers, these rules shall apply.

COMMITTEE COMMENT

This rule is based on former Rule 53(k), *Arizona Rules of Civil Procedure*, an experimental rule that was abrogated simultaneously with the effective date of these rules.

Rule 74. Parenting Coordinator

A. Determination of Need for Parenting Coordinator and Appointment. Prior to, simultaneously with, or after entry of a decree, judgment, or custody or parenting time order, at the request of either party or on the court's own motion, the court may appoint a Parenting Coordinator in any proceeding under Title 25, A.R.S., involving children if it finds any of the following:

1. the parents are persistently in conflict with one another;

2. there is a history of substance abuse by either parent or family violence;

3. there are serious concerns about the mental health or behavior of either parent;

4. a child has special needs; or

5. it would otherwise be in the children's best interests to do so.

Parents may agree to use a Parenting Coordinator and agree to a specific person, subject to approval by the court, or the court may make the choice of the person to serve as the Parenting Coordinator.

B. Persons Who May Serve as Parenting Coordinators. A Parenting Coordinator may be an attorney who is licensed to practice law in Arizona; a psychiatrist who is licensed to practice medicine or osteopathy in Arizona; a psychologist who is licensed to practice psychology in Arizona; a person who is licensed by the Arizona Board of Behavioral Health Examiners as a social worker, professional counselor, marriage and family therapist, or substance abuse counselor; any other Arizona licensed or certified professional with education, experience, and special expertise regarding the particular issues referred; or professional staff of conciliation services. The court may prescribe additional requirements for service as Parenting Coordinator.

C. Term of Service. The term of the Parenting Coordinator will be designated in the Order of Appointment. The Parenting Coordinator may resign upon notice to the parties and order of the court. Absent an order of the court, one or both parties cannot discharge the Parenting Coordinator. Complaints about the Parenting Coordinator shall be addressed in the manner specified in the Order of Appointment. If such complaints remain unresolved after following the procedures specified in the order, a motion may be filed with the court requesting removal of the Parenting Coordinator. The court may terminate the service of the Parenting Coordinator at any time upon finding that there is no longer a need for the assistance of the Parenting Coordinator.

D. Fees. The court will determine the fees for the services of a Parenting Coordinator and the allocation of fees between the parties. The court may order that the parents pay the Parenting Coordinator a retainer before the Parenting Coordinator begins work with a family. If permitted by the Order of Appointment, the Parenting Coordinator may recommend to the court an adjustment in the division of payment under special circumstances.

E. Powers and Scope of Appointment. The court order appointing the Parenting Coordinator shall specify the scope of the appointment. The scope may include assisting with implementation of court orders, making recommendations to the court regarding implementation, clarification, modification, and enforcement of any temporary or permanent custody or parenting time order, and making recommendations on the day-to-day issues experienced by the parties. By way of example only, these issues include disagreements around exchanges, holiday scheduling, discipline, health issues, school and extracurricular activities, and managing problematic behaviors by the parents or child(ren). The Parenting Coordinator shall not have the authority to make a recommendation affecting child support, a change of custody, or a substantial change in parenting time. In the event the Parenting Coordinator determines parenting or family issues or circumstances exist that are significantly detrimental to the welfare of the child(ren) and that a change in custody or a substantial change in parenting time is warranted, the Parenting Coordinator may submit the Parenting Coordinator's concerns in writing to the parties and the court.

F. Additional Authority of Parenting Coordinator. The Parenting Coordinator may interview all members of the immediate and extended family or household of both parties and the children. To the extent provided in the Order of Appointment, the Parenting Coordinator may interview and request information from any persons who the Parenting Coordinator deems to have relevant information, including doctors, therapists, schools, or other caretakers. The Parenting Coordinator may recommend that the court order the parties or children to participate in ancillary services, to be provided by the court or third parties, including but not limited to physical or psychological examinations or assessments, counseling, and alcohol or drug

monitoring and testing. The court shall allocate between the parties the cost of any ancillary services ordered.

G. Time Sensitive Issue Authority and Procedure. When a short-term, emerging, and time sensitive situation or dispute within the scope of authority of the Parenting Coordinator arises that requires an immediate decision for the welfare of the children and parties, a Parenting Coordinator may make a binding temporary decision. This interim decision shall be made without prejudice and shall not be regarded as precedent as to any future action or procedure for any other dispute. The decision shall be submitted to the assigned judge with a copy to the parties (or counsel, if represented) in a written report that shall document all substantive issues addressed and the basis for the decision for review and entry of any appropriate orders at the judge's earliest opportunity. Thereafter, the procedures set forth in paragraph H shall apply.

H. Report. Recommendations by the Parenting Coordinator ~~must~~ shall be made or confirmed to the court and parties in a form substantially similar to ~~written report to the court and parties in substantially the same format as Rule 97~~ Form 9, Parenting Coordinator's Report and Recommendation, which shall be submitted no later than five (5) days after an oral determination or receipt of all information necessary to make a recommendation. A copy of the report will be mailed or transmitted to the parties or their counsel on the date of submission. The report may be transmitted by fax or email to the parties at a fax number or email address provided by the parties to the Parenting Coordinator.

I. Objection. A party who objects shall clearly state in writing the objection to the recommendation, the basis for the objection, a proposed solution, and whether a hearing is requested. The judicial officer shall set a hearing if requested. If no hearing is requested, the judicial officer may rule on the objection without further hearing. By agreement of the parties or order of the court, the recommendations of the Parenting Coordinator will remain in effect during this objection period and process unless and until it is affected by a further order of the court.

J. Court Action. The court, upon receipt of a report and recommendation from a Parenting Coordinator, may: (1) approve the recommendation and adopt it as an interim order of the court, subject to either party objecting or requesting a hearing within ten (10) days from the date the report and recommendation is submitted to the court; (2) modify the recommendation and adopt the modified recommendation as an interim order of the court, subject to either party objecting or requesting a hearing within ten (10) days from the date the report and recommendation is submitted to the court; (3) reject the recommendation report in whole or in part and affirm the current order, subject to either party objecting or requesting a hearing within ten (10) days from the date the report and recommendation is submitted to the court; or (4) set a hearing on the assigned judicial officer's calendar. The court may use ~~an order substantially similar to Rule 97,~~ Form 10, Order Regarding Parenting Coordinator's Report and Recommendations, for purposes of this paragraph.

K. Immunity. The Parenting Coordinator has immunity in accordance with Arizona law as to all acts undertaken pursuant to and consistent with the appointment order of the court.

L. Applicability. No county is required to employ or utilize Parenting Coordinators; however, in the event a county elects to use Parenting Coordinators, these rules shall apply.

COMMITTEE COMMENT

This rule is based on Maricopa County Local Rule 6.12, Pima County Local Rule 8.11 and Coconino County Local Rule 20. The term "Parenting Coordinator" replaces the terms "special master" and "family court advisor" previously used in Arizona based on a national trend. Further, the Association of Family and Conciliation Courts (AFCC) has promulgated guidelines for the appointment of Parenting Coordinators. The appointment of a Parenting Coordinator is appropriate when parents have ongoing conflicts related to enforcement of custody and parenting time orders, which without a Parenting Coordinator would result in protracted litigation. The appointment of such persons to assist the court is authorized pursuant to A.R.S. § 25-405, and shall also comply with the requirements of A.R.S. § 25-406. Parenting Coordinators are used throughout the country to assist in the effective resolution of the ongoing conflicts surrounding custody and parenting time issues. This rule is not intended to transfer the authority and jurisdiction of the superior court to make custody decisions or substantially modify parenting time.

For purposes of example only, and not by limitation, short-term, emerging, and time-sensitive situations governed by paragraph G might be: 1) temporarily changing exchange day, time, or place due to an immediate need; 2) attendance at or participation in an unexpected special event or occasion by the child or a parent; 3) responsibility for care of a sick child or accompaniment to medical treatment; or 4) another unpredictable and significant need of the child or a parent.

Additional parent information regarding the use of Parenting Coordinators may be found in ~~Rule 97,~~ Form 11, Parent Information Regarding the Use of Parenting Coordinators.

Rule 75. Plan for Expedited Process

Any county which has a plan for expedited process pursuant to A.R.S. §§ 25-326 and 25-412, shall set forth that county's plan in a local rule or an administrative order.

IX. PRETRIAL AND TRIAL PROCEDURES

Rule 76. Pretrial Procedures

A. Resolution Management Conference (RMC); Preparation and Matters to Be Discussed.

1. ~~Except as otherwise provided in Rule 47(H) and u~~Upon written request of any party, the court shall, or upon its own motion the court may, schedule one or more Resolution Management Conferences that shall be held within sixty (60) days of receipt of written request by the court, unless extended for good cause shown.

2. Within the time set by the court in the particular case, or if no time is set then not less than five (5) judicial days prior to the date of the Resolution Management Conference, each party shall:

a. personally meet and confer with the opposing party or parties and their counsel to resolve as many issues as possible (if there is a current court order prohibiting contact of the parties or a significant history of domestic violence between the parties, the parties shall not be required to personally meet or contact each other in violation of the court order, but the parties and their counsel shall take all steps reasonable under the circumstances to resolve as many issues as possible);

b. comply with all applicable disclosure requirements set forth in Rule 49 or 50; ~~and~~

c. prepare and file a written Resolution Statement setting forth any agreements and a specific and detailed position the party proposes to resolve all disputed issues in the case, without argument in support of the position~~.~~ (t~~T~~he Resolution Statement shall be submitted in a form ~~that~~ substantially similar to ~~complies with Rule 97,~~ Form 4 or 5, as applicable; ~~. I~~if child support is an issue in the case, the statement shall include a completed Child Support Worksheet prepared in accordance with the *Arizona Child Support Guidelines*~~.~~); and

d. comply with the ADR reporting requirement of Rule 66(E).

3. At any Resolution Management Conference under this rule, the court may:

a. enter binding agreements on the record in accordance with Rule 69;

b. determine the positions of the parties on the disputed issues and explore reasonable solutions ~~with the parties~~ to facilitate settlement of the issues;

c. enter temporary orders ~~as agreed upon by the parties (on agreement of the parties, the court may also enter temporary orders based upon the discussions, avowals, and arguments presented by the parties~~ in accordance with the stipulations of the parties or, if agreed to by the parties, based upon the discussions, avowals, and arguments presented without an evidentiary hearing on the contested issues~~)~~**;**

d. order evaluations, assessments, appraisals, testing, appointments, or other special procedures needed to properly manage the case and resolve the disputed issues;

e. schedule ~~a trial date or~~ an evidentiary hearing, a trial date and any other necessary hearings or conferences;

f. resolve any discovery and disclosure schedules and disputes;

g. eliminate non-meritorious claims or defenses;

h. permit the amendment of pleadings;

i. assist in identifying those issues of fact and law that are still at issue;

j. refer a matter for settlement conference;

k. order other ADR processes;

l. set a date for filing the joint pretrial statement required by paragraph D ~~of this rule~~;

m. impose time limits on trial proceedings or portions thereof, and issue orders regarding management of documents, exhibits, and testimony; and

n. make such other orders as the court deems appropriate.

B. Pretrial Orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. ~~The order following a final pretrial conference shall be modified only to prevent manifest injustice.~~

C. Pretrial Statement, Inventory of Property, and Financial Affidavit~~s~~; Preparation; Final Pretrial Conference.

1. The parties shall file a pretrial statement. If not specified by the court, the statement may be joint or separate, ~~Except in the case where~~ except that if there ~~is~~ has been domestic violence between unrepresented parties, the parties shall file ~~a joint pretrial statement~~ separate statements. If a joint statement is to be filed, upon initiative ~~there has been domestic violence between unrepresented parties, the parties may file separate pretrial statements. Upon the initiative~~ of the petitioner or counsel for the

petitioner, the parties or counsel, if the parties are represented, shall confer and prepare a written pretrial statement, signed by each party or counsel, to be filed by the petitioner no later than twenty (20) days prior to trial, unless another time is set by the court. ~~Such~~ Each pretrial statement shall contain the following:

a. the nature of the action;

b. names and addresses, if not confidential, of the parties;

c. names and dates of birth of all minor children;

d. the length of the trial if ~~different from~~ shorter than that scheduled by the court;

e. a list of the names, addresses, and phone numbers of witnesses intended to be used by each party during the trial, ~~including an indication of~~ indicating witnesses whose testimony will be received by deposition ~~testimony~~ only (no witness shall be used at the trial other than those listed, except for good cause shown);

f. a list of the exhibits that each party intends to use at trial, specifying exhibits that the parties agree are admissible at trial, or if not in agreement, a list of the objections and the specific grounds for each objection that a party will make if the exhibit is offered at trial (specific objections or grounds not listed in the pretrial statement may be deemed waived at the discretion of the trial judge);

g. stipulations or agreements of the parties;

h. a statement of uncontested facts;

i. detailed and concise statements of contested issues of fact and law by each party;

j. a statement by each party that all pretrial discovery and disclosure has been completed by the trial date and that the parties have exchanged all exhibits and reports of expert witnesses who have been listed as witnesses; and

k. a statement as to whether the parties have in good faith discussed settlement, and if not, the reasons for not discussing settlement.

l. a statement by each party on how a verbatim record of the trial will be made.

2. The parties shall each file with the joint or separate pretrial statement(s) the following:

a. ~~an Affidavit of Financial Information on a form approved by the court; and~~ a comprehensive statement of income and expenses substantially similar to Form 2, Affidavit of Financial Information, or such other form permitted by local rule of the Superior Court in which the matter is pending;

b. if the case involves custody, parenting time or child support issues, a fully completed Parent's Worksheet for Child Support Amount; and

~~b.~~ c. if the case involves an action for dissolution, legal separation or annulment, a detailed itemized inventory of property and debt, listing the community, joint tenancy, and other property and debts held in common by the parties, and the separate property and debts of each party. This inventory shall set forth the date the property was acquired, by what title the parties hold the property, the amount of encumbrance thereon, and each party's evaluation of the fair market value of the property. The inventory shall also set forth the party's proposed distribution of property and debts. The ~~I~~inventory shall be in a format substantially similar to ~~accordance with Rule 97,~~ Form 12, ~~"~~Inventory of Property and Debts.~~"~~

3. No ~~other~~ exhibits or witnesses shall be offered or presented during the trial other than those listed and exchanged, except when otherwise permitted by the court in the interest of justice and for good cause shown.

4. If there has been a failure by either or both counsel, or the parties if not represented by counsel, to meet and prepare the pre-trial statement, the court may impose any of the sanctions or penalties provided by these rules or any statute or authority of the court, ~~or on request of a party,~~ and in the absence of good cause shown, the court may continue the trial, enter an interim award for relief to the requesting party based on his or her Financial Affidavit, and award the requesting party his or her attorneys' fees and expenses incurred in preparing for and attending the pretrial hearing, trial or settlement conference scheduled by the court.

5. In its discretion, the court may schedule a final pretrial conference prior to trial at which the ~~trial~~ court ~~judge~~ shall review the pretrial statement and ascertain whether the parties have complied with the requirements of this rule. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties. The order following a final pretrial conference shall be modified only upon a showing of extraordinary circumstances.

D. Sanctions. If a party or attorney fails to obey a scheduling or pretrial order, or any provision of this rule, or if no appearance is made on behalf of a party at a Resolution Management Conference, a pretrial conference, an evidentiary hearing, a trial or other scheduled hearing, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith in a conference,

hearing, or trial, or in the preparation of a resolution statement or joint pretrial statement, the ~~judge,~~court upon motion or its ~~the judge's~~ own initiative, shall, except upon a showing of good cause, make such orders with regard to such conduct as are just, including, among others:

1. an order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting that party from introducing designated matters in evidence;

2. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any party thereof, or rendering a judgment or temporary order;

3. in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders, except an order to submit to a physical or mental examination.

In lieu of or in addition to any other sanction, the court shall require the party, or the attorney representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorneys' fees or an assessment to the clerk of the court, or both, unless the court finds that the noncompliance was substantially justified, or that other circumstances make an award of expenses unjust.

COMMITTEE COMMENT

This rule is based on Rules 7.1 and 16, *Arizona Rules of Civil Procedure*, with additions added to fit the family law context.

Rule 77. Trial Procedures

A. Setting of Cases for Trial. In every family law case, unless a trial has been set at a Resolution Management Conference or on the court's own motion, any party may file a Motion to Set requesting that the case be set for trial. The motion shall state:

1. ~~that~~ the date by which the case will be ready for trial ~~on or after [insert date]~~;

2. ~~that~~ the names, addresses and telephone numbers of the parties or their individual attorneys who are responsible for the conduct of the litigation ~~are: [insert the appropriate information]~~;

3. whether the case is entitled to a preference for trial because custody is at issue ~~the estimated time for trial~~; and

4. the estimated time for trial ~~whether the case is entitled to a preference for trial because custody is at issue~~.

B. ~~Conduct in Trial~~ Trial Scheduling.

1. The court may impose reasonable time limits on the trial proceedings or portions thereof, and limit the time for trial to scheduled time. Any party may request additional time by motion made no less than 45 days before the scheduled trial date.

2. Trials shall be conducted in an orderly, courteous, and dignified manner. Arguments and remarks shall be addressed to the court, except that by permission of the court, counsel may make proper inquiries or ask questions of opposing counsel.

C. ~~Trial~~ Continuances and Scheduling Conflicts.

1. ~~*Trial*~~ *Continuance.* When an action has been set for trial, hearing or conference on a specified date by order of the court, no continuance of the trial, hearing or conference shall be granted except upon written motion setting forth sufficient grounds and good cause, or as otherwise ordered by the court. Stipulations for continuances shall be regarded as joint motions to continue and must set forth grounds or good cause for the request. No trial setting or hearing date shall be vacated or continued except by formal order of the court.

2. *Motion to Continue; Unavailability of Witness or Party.* On a Motion to Continue a Trial, if the ground for the continuance is the unavailability of a party or witness, the party requesting the continuance shall state in the motion:

a. why the testimony of such witness is material to the proceedings;

b. that the party has used due diligence to obtain such testimony;

c. when the party learned of the witness' or the party's unavailability; and

d. that the postponement is not sought only for delay, but is based on good cause.

3. *Scheduling Conflicts between Courts.*

a. *Notice to the Court.* Upon learning of a scheduling conflict between a case in superior court and a case in United States District Court, or between cases in the superior courts of different counties, or between cases in different courts within a county, or between divisions of the same court, counsel has a duty to promptly notify the judges and other counsel involved in order that the conflict may be resolved.

b. *Resolution of Conflicts.* Upon being advised of a scheduling conflict, the judges involved shall, if necessary, confer personally or by telephone in an effort to resolve the conflict. While neither federal nor state court cases have priority in scheduling, the following factors may be considered in resolving the conflict:

1) the nature of the cases as civil or criminal, and the presence of any speedy trial problems;

2) the length, urgency, or relative importance of the matters;

3) whether the case involves out-of-town witnesses, parties, or counsel;

4) the age of the cases;

5) the matter that was set first;

6) any priority granted by rule or statute; and

7) any other pertinent factor.

4. *Inter-Division Conflicts.* Conflicts in scheduling between divisions of the same court may be governed by local rule or general order.

~~5. *Time Limitation.* The court may impose reasonable time limits on the trial proceedings or portions thereof.~~

COMMITTEE COMMENT

Paragraph B is based on Rule 80(a), *Arizona Rules of Civil Procedure*. ~~Subdivision C(5) is based on Rule 16(h), *Arizona Rules of Civil Procedure*.~~

X. JUDGMENTS AND DECREES

Rule 78. Judgments; Costs; Attorneys' Fees

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

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 ~~special~~ ~~F~~family ~~L~~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.

COMMITTEE COMMENT

This rule is based on Rule 54, *Arizona Rules of Civil Procedure*.

Rule 79. Summary Judgment

A. For Claimant. A party seeking to recover upon a claim, counterclaim, or to obtain a declaratory judgment may move for a summary judgment in the party's favor upon all or any part thereof. Said motion may be made with or without supporting affidavits at any time after the expiration of twenty (20) days from the service of process upon the adverse party, but no sooner than the date on which the ~~answer~~ response is due, or after service of a motion for summary judgment by the adverse party.

B. For Defending Party. A party against whom a claim or counterclaim is asserted or a declaratory judgment is sought may move for a summary judgment in the party's favor as to all or any part thereof. Such motion may be made with or without supporting affidavits.

C. Motion and Proceedings Thereon.

1. Unless otherwise ordered by the court, all motions for summary judgment shall be filed not later than sixty (60) days prior to trial. Upon timely request by any party, the court shall set a time for hearing of the motion. If no request is made, the court may, in its discretion, set a time for such hearing. A party opposing the motion must file affidavits, memoranda, or both within fifteen (15) days after service of the motion. The moving party shall have five (5) days thereafter in which to serve reply memoranda and affidavits. The foregoing time periods may be shortened or enlarged by the court or by agreement of the parties. The judgment sought shall be rendered forthwith if the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

2. Any party filing a motion for summary judgment shall set forth, separately from the memorandum of law, the specific facts relied upon in support of the motion. The facts shall be stated in concise, numbered paragraphs. As to each fact, the statement shall refer to the specific portion of the record where the fact may be found. Any party opposing a motion for summary judgment shall file a statement in the form prescribed by this rule, specifying those paragraphs in the moving party's statement of facts which are disputed, and also setting forth those facts which establish a genuine issue of material fact or otherwise preclude summary judgment in favor of the moving party. In the alternative, the movant and the party opposing the motion shall file a joint statement in the form prescribed by this rule, setting forth those material facts as to which there is no genuine dispute. The joint statement may provide that any stipulation of fact is not intended to be binding for any purpose other than the motion for summary judgment.

D. Case Not Fully Adjudicated on Motion. If, on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which ~~the amount of damages or other~~ requested relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

E. Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

F. When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

G. Affidavits Made In Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorneys' fees, and any offending party or attorney may be adjudged guilty of contempt.

COMMITTEE COMMENT

This rule is based on Rule 56, *Arizona Rules of Civil Procedure*.

Rule 80. Declaratory Judgments

The procedure for obtaining a declaratory judgment shall be in accordance with these rules. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

COMMITTEE COMMENT

This rule is based on Rule 57, *Arizona Rules of Civil Procedure*.

Rule 81. Entry of Judgment

A. Preparation and Signing of Judgments and Other Orders. Forms of judgment shall be served upon all parties and counsel. Except as provided in Rule 78~~(E)~~ (D), a party seeking attorneys' fees shall provide in the form of judgment for an award of attorneys' fees in an amount to be entered by the court. All judgments shall be in writing and signed by a judge or a court commissioner duly authorized to do so. The filing with the clerk of the judgment constitutes entry of such judgment, and the judgment is not effective before such entry, except that in such circumstances and on such notice as justice may require, the court may direct the entry of a judgment *nunc pro tunc*, and the reasons for such direction shall be entered of record. The entry of the judgment shall not be delayed for taxing costs.

B. Enforcement of Judgment; Special Writ. The court shall cause the judgment to be carried into execution. When the judgment is for personal property, and it is shown by the pleadings and found that the property has a special value to the petitioner, or prevailing party, the court may award the petitioner or prevailing party a special writ for the seizure and delivery of the property and may, in addition to the other relief granted, enforce its judgment in the manner provided by law.

C. Objections to Form.

1. In case of a judgment other than for money or costs, or that all relief be denied, the judgment shall not be settled, approved, and signed until the expiration of five (5) days after the proposed form thereof has been served upon opposing counsel unless the opposite party or that party's counsel endorses on the judgment an approval as to form. The five-day provision may be waived by the court only upon an express written finding by minute order or otherwise of necessity to shorten time or to enter judgment without notice.

2. If objection to the form of the judgment is made within the time provided in subdivision 1 of this paragraph, the party submitting the proposed form of judgment may respond to the objection within five (5) days after service thereof, and the matter shall thereafter be presented to the court for determination, without oral argument, unless the court otherwise directs.

3. The requirements of this rule shall not apply to parties in default, or to judgments, decrees or orders prepared originally by the court.

D. Minute Entries: Notice of Entry of Judgments. The clerk shall distribute, either by U.S. mail, electronic mail, or attorney drop box, copies of all minute entries to all parties. Immediately upon the entry of a judgment as defined in Rule 78(A), the clerk shall distribute, either by U.S. mail, electronic mail, or attorney drop box, a notice of the entry of judgment

stating the date of entry, in the manner provided for in Rule 43, to every party who is not in default for failure to appear, and shall make a record of the distribution. Any party may in addition serve a notice of such entry, in the manner provided in Rule 43 for the service of papers. In the case of a judgment in the form of a minute entry, the date of entry shall be the date on which the clerk affixes a file stamp on the minute entry. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as provided in Rule 9(a), *Arizona Rules of Civil Appellate Procedure*.

Notice of entry of judgment shall be accomplished by any of the following:

1. a specifically designated notice form;

2. a minute entry; ~~and~~ or

3. a conformed copy of the file stamped judgment.

COMMITTEE COMMENT

This rule is based on Rule 58, *Arizona Rules of Civil Procedure*.

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

A. Effect. In all family law proceedings tried upon the facts, the court, if requested before trial, shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 81. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or minute entry or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 32 and 79 or any other motion, except as provided in paragraph C.

B. Amendment. 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 whether or not the party raising the question has made in the superior court an objection to such findings or has made a motion to amend them or a motion for judgment.

C. Judgment on Partial Findings. If during a family law proceeding a party has been fully heard on an issue and the court, after determining the facts, finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable

finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law, if requested as required by paragraph A.

D. Submission on Agreed Statement of Facts. The parties to an action may submit the matter in controversy to the court upon an agreed statement of facts, stated orally in open court on the record, or signed by them and filed with the clerk, and the court shall render judgment thereon as in other cases. The agreed statement, certified by the court to be correct, and the judgment shall constitute the record of the action.

COMMITTEE COMMENT

This rule is based on Rule 52, Arizona *Rules of Civil Procedure*.

Rule 83. Motion for New Trial

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

1. irregularity in the proceedings of the court or a party, or abuse of discretion, whereby the moving party was deprived of a fair trial;

2. misconduct of a party;

3. accident or surprise which could not have been prevented by ordinary prudence;

4. material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the trial;

5. error in the admission or rejection of evidence or other errors of law occurring at the trial or during the progress of the action;

6. that the ruling, decision, findings of fact, or judgment is not justified by the evidence or is contrary to law.

B. Scope. 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 a new trial, the court may open the judgment, if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

C. Contents of Motion; Amendment; Rulings Reviewable.

1. The motion for new trial shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the court.

2. Upon the general ground that the court erred in admitting or rejecting evidence, the court shall review all rulings during the trial upon objections to evidence.

3. Upon the general ground that the decision, findings of fact, or judgment is not justified by the evidence, the court shall review the sufficiency of the evidence.

D. Procedure for Filing Motion for New Trial; New Trials Granted.

1. *Time for Motion.* A motion for new trial shall be filed not later than fifteen (15) days after entry of the judgment.

2. *Time for serving affidavits.* When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has ten (10) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

3. *Number of new trials.* Not more than two (2) new trials shall be granted to either party in the same action.

4. *Specification of grounds for new trial in order.* No order granting a new trial shall be made and entered unless the order specifies with particularity the grounds on which the new trial is granted.

E. New Trial Ordered On Initiative of Court. Not later than fifteen (15) days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefore.

F. Questions to Be Considered in New Trial. A new trial, if granted, shall be only a new trial of the question or questions with respect to which the decision is found erroneous, if separable.

G. After Service by Publication.

1. When judgment has been rendered on service by publication, and the ~~defendant~~ respondent has not appeared, a new trial may be granted upon application of the ~~defendant~~ respondent for good cause shown by affidavit, made within one (1) year after rendition of the judgment.

2. Execution of the judgment shall not be stayed, except on motion of the party or the court's own motion and order of the court. The court may require the respondent to give a bond in an amount set by the court to assure that the party will prosecute the

application for a new trial and will satisfy such judgment as may be rendered by the court should its decision be against the respondent.

COMMITTEE COMMENT

This rule is based on Rule 59, *Arizona Rules of Civil Procedure*.

Rule 84. Motion to Alter or Amend a Judgment ~~or Decree~~ or Order

A party seeking ~~reconsideration,~~ alteration~~,~~ or amendment of a ~~ruling~~ judgment of the court may file a motion for alteration or amendment of a judgment ~~of decree~~ or order. All such motions~~, however denominated,~~ shall be filed not later than 15 days after entry of the judgment ~~submitted without oral argument and without response or reply, unless the court otherwise directs. No motion for alteration or amendment 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.~~ Responsive pleadings shall be filed no later than ten (10) days after filing of the motion to alter or amend the judgment ~~or order~~, except as otherwise ordered by the court.

COMMITTEE COMMENT

This rule is based on Rule 59(l), *Arizona Rules of Civil Procedure*.

Rule 85. Motion to Correct Mistakes; Relief from a Judgment or ~~Decree~~ Order

A. Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on motion of any party and after such notice, if any, as the court orders. During pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

B. Correction of Error in Record of Judgment or Order

1. When a mistake in a judgment or ~~decree~~ order is corrected as provided by paragraph A, thereafter the execution shall conform to the judgment as corrected.

2. Where there is a mistake, miscalculation, or misrecital of a sum of money or of a name, and there is among the records of the action a verdict or instrument in writing whereby such judgment may be safely corrected, the court shall, on application and after notice, correct the judgment accordingly.

C. Mistake; Inadvertence; Surprise; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

1. On motion and upon such terms as are just the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons:

a. mistake, inadvertence, surprise, or excusable neglect;

b. newly discovered evidence, which by due diligence could not have been discovered in time to move for a new trial under Rule 83(~~A~~D);

c. fraud, misrepresentation, or other misconduct of an adverse party;

d. the judgment is void;

e. the judgment has been satisfied, released, or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

f. any other reason justifying relief from the operation of the judgment.

2. The motion shall be filed within a reasonable time, and for reasons ~~(1), (2),~~ 1(a), 1(b) and ~~(3)~~ 1(c) not more than six (6) months after the judgment or order was entered or proceeding was taken.

3. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a ~~defendant~~ respondent served by publication as provided by Rule 83(G), or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

D. Reversed Judgment of Foreign State. When a judgment has been rendered upon the judgment of another state or foreign country, and the foreign judgment is thereafter reversed or set aside by a court of such state or foreign country, the court in which judgment was rendered in this state shall set aside, vacate and annul its judgment.

COMMITTEE COMMENT

This rule is based on Rule 60, *Arizona Rules of Civil Procedure*.

Rule 86. Harmless Error

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise

disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

COMMITTEE COMMENT

This rule is based on Rule 61, *Arizona Rules of Civil Procedure*.

Rule 87. Stay of Proceedings

A. Stay on Motion for New Trial or for Judgment. Except as otherwise provided in Rule 7, *Arizona Rules of Civil Appellate Procedure*, in its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of any proceedings to enforce a judgment, pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 83 or 84, or of a motion for relief from a judgment or order made pursuant to Rule 85, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 82(B), or when justice so requires in other cases until such time as the court may fix.

B. Stay of Judgment Directing Execution of Instrument; Sale of Perishable Property and Disposition of Proceeds.

1. If the judgment or order appealed from directs the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal until the instrument is executed and deposited with the clerk of the superior court to abide the judgment of the Supreme Court.

2. A judgment or order directing the sale of perishable property shall not be stayed, but the proceeds of the sale shall be deposited with the clerk of the superior court to abide the appeal.

C. Stay in Favor of the State or Agency or Political Subdivision Thereof. Money judgments against the state or agency or political subdivision thereof are automatically stayed when an appeal is filed. Judgments against the state or agency or political subdivision thereof other than money judgments are not automatically stayed when an appeal is filed, but as to them, no bond can be required if a stay is ordered.

D. Stay of Judgment under Rule 78(B). When a court has ordered a final judgment under the conditions stated in Rule 78(B), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

E. Stay of Judgments in Rem. No execution or other process shall issue on judgments in rem disposing of an interest in property, in connection with which a proper claim was timely filed and the claimant is not in default, until fifteen (15) days after the time for filing a notice of appeal begins. Within such fifteen-day period, no such judgment shall be self-executing.

COMMITTEE COMMENT

This rule is based on Rule 62, *Arizona Rules of Civil Procedure*.

Rule 88. Disability of a ~~Judge~~ Judicial Officer

If a trial or hearing has been commenced and the ~~judge~~ judicial officer is unable to proceed, any other ~~judge~~ judicial officer may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. ~~In a hearing or trial without a jury~~, At the request of a party and if an adequate electronic record is not available, the successor ~~judge~~ judicial officer shall ~~at the request of a party~~ recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor ~~judge~~ judicial officer may also recall any other witness.

COMMITTEE COMMENT

This rule is based on Rule 63, *Arizona Rules of Civil Procedure*.

Rule 89. Judgment for Specific Acts; Vesting Title

A. Judgment for Specific Acts. If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court, and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt.

B. Vesting Title. If real or personal property is within the state, the court, in lieu of directing a conveyance thereof, may enter a judgment divesting the title of any party and vesting it in others, and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

COMMITTEE COMMENT

This rule is based on Rule 70, *Arizona Rules of Civil Procedure*.

Rule 90. Process on Behalf of and Against Persons Not Parties

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party, and, when obedience to an order

may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

COMMITTEE COMMENT

This rule is based on Rule 71, *Arizona Rules of Civil Procedure*.

XI. POST-DECREE/POST-JUDGMENT PROCEEDINGS

Rule 91. Post-Decree/Post-Judgment Proceedings

A. Modification or Enforcement of Prior Orders; General Provisions.

1. A party seeking to modify or enforce a prior family court order shall file a petition with the clerk of the court setting forth with specificity all relief requested, and pay the required filing fee. Except as to petitions filed by the state in Title IV-D matters, all petitions to enforce or modify shall be under oath. The petition shall indicate, at a minimum, the nature of the proceeding, the estimated time for the entire hearing, and the relief sought.

2. All petitions to enforce or modify a prior order of the court shall set forth the pertinent portion of the prior order, the date the order was entered, and the name and location of the court that entered the order. In the event the pertinent portion of the prior order is so voluminous as to make it impractical to include it in the petition verbatim and the order is contained in the official court file of the case, the pertinent portion of the order may be incorporated into the petition by reference.

3. The parties in all post-decree/post-judgment petitions, motions and documents shall be denominated as they were in the Decree or Judgment. The term "applicant" as used in this rule refers only to the petitioner or respondent who is filing the petition to enforce or modify.

4. Except for petitions to Modify Child Custody filed pursuant to Rule 91(D) or 91(E)(2), and unless a different procedure is established by local rule, the applicant shall submit to the assigned judicial officer the original and three (3) copies of an Order to Appear, together with three (3) copies of the Petition showing evidence of being filed with the clerk of the court. The clerk of the court shall file the original Order to Appear when signed by the assigned judicial officer.

~~4.~~5. Whenever ~~the term "Affidavit of Financial Information" is used in this rule, parties shall refer to the relevant Form 2, Rule 97~~ an affidavit of financial information is required by this rule, an affidavit substantially similar to Form 2, Affidavit of Financial Information, or such other form permitted by local rule of the Superior Court in which the matter is pending, shall be used.

B. Petitions for Modification of Spousal Maintenance or Child Support.

1. *Petition for Modification of Spousal Maintenance.* A petition for modification of spousal maintenance shall comply with paragraph A, and shall set forth the substantial and continuing changes in circumstances supporting a modification, and the applicant shall attach to and file with the original petition a current Affidavit of Financial Information. Within the time provided by paragraph L, a ~~A~~ copy of the petition, the Affidavit of Financial Information, and the issued Order to Appear shall be served upon the opposing party along with a blank copy of an Affidavit of Financial Information

~~within the time provided by paragraph L~~. The opposing party shall respond by filing and serving a completed Affidavit of Financial Information within the time provided by paragraph M.

2. *Petition for Modification of Child Support.*

a. *Order to Appear.* A petition for modification of child support shall comply with paragraph A and shall set forth the substantial and continuing changes in circumstances supporting a modification. The applicant shall attach to and file with the original petition a current Affidavit of Financial Information. Within the time provided by paragraph L, a ~~A~~ copy of the petition, the Affidavit of Financial Information, and the issued Order to Appear shall be served upon the opposing party, along with a blank copy of an Affidavit of Financial Information ~~within the time provided by paragraph L~~. The opposing party shall respond by filing and serving a completed Affidavit of Financial Information within the time provided by paragraph M. Both parties shall also within the time provided by paragraph M serve upon the other party and bring to the hearing copies of the documents and information set forth in paragraph P.

b. *Request for Simplified Procedure.* A party seeking to modify child support by use of the ~~S~~ simplified ~~P~~ procedure for modification outlined in the *Arizona Child Support Guidelines* shall file with the clerk of the court a request for ~~S~~ simplified ~~M~~ modification, accompanied by a sworn Parent's Worksheet for Child Support Amount, and pay the required filing fee. The parties shall then follow the procedures specified in the *Arizona Child Support Guidelines*, Appendix to A.R.S. § 25-320.

c. *Title IV-D.* In Title IV-D matters, the state shall serve both parents with the petition or request, the issued Order to Appear, and a blank Affidavit of Financial Information, with instructions to complete, file, and serve the Affidavit as required by paragraph M.

C. Petition for Enforcement of Child Support or Spousal Maintenance. A petition to enforce an order to pay spousal maintenance, child support, medical or dental costs, or other sums due pursuant to a child support order shall comply with paragraph A, and shall include a current summary calculation of arrears derived from the ~~c~~Clearinghouse records of the Department of Child Support Enforcement, if available, or if not available, a statement of all sums due. If the petition includes a request for reimbursement of medical, dental, or vision costs, the petition shall include a detailed summary of all medical, dental, and vision bills claimed, the amount of each bill paid by insurance or other third party, the amount of each bill paid by each party, the remaining unpaid balance, and the remaining pro rata obligation of each party~~. in a form substantially in accord with a worksheet for unreimbursed health care and other allowed expenses, as required by the court~~. A copy of the petition and issued Order to Appear shall be served upon the opposing party along with a blank copy of an Affidavit of Financial Information within the time provided by paragraph L. The opposing party shall respond by filing and serving

a completed Affidavit of Financial Information within the time provided by paragraph M, along with copies of the following documents:

1. that party's most recently filed federal and state income tax returns, with all schedules;

2. that party's four most recent consecutive wage statements from all employment;

3. that party's most recent W-2, 1099, and K-1 forms, as applicable; and

4. where the opposing party claims sums sought by the applicant have been paid, receipts or statements supporting the opposing party's claim.

D. Petition to Modify Child Custody. No hearing for modification of a child custody order or decree shall be set unless there is compliance with A.R.S. § 25-411 and the requirements set forth in this paragraph.

1. Any party seeking a modification of child custody shall file with the clerk of the court, and provide a copy to the assigned division of, the following:

a. a Petition for Modification of Child Custody, either verified by the moving party or supported by the requisite affidavit(s) pursuant to A.R.S. § 25-411, in compliance with paragraph A, and including a certification whether the underlying custody order or agreement contains a provision requiring the parties to pursue mediation or other alternate dispute resolution process prior to requesting court relief for modification, and, if so, what efforts have been made to comply with that provision;

b. a Notice of Filing Petition for Modification of Child Custody directed to all persons entitled to notice pursuant to A.R.S. § 25-1035; and

c. in actions in which the custody order or decree was not entered by an Arizona court, an affidavit required by A.R.S. § 25-1039.

2. The clerk of the superior court shall issue the Notice of Filing Petition for Modification of Child Custody.

3. The verified petition or affidavits and the issued Notice of Filing Petition for Modification of Child Custody shall be served on all persons entitled to notice, pursuant to the appropriate provisions of Rule 41, 42, or 43, whichever is applicable.

4. Unless otherwise ordered by the court, all persons entitled to notice may ~~shall~~ file a response, verified or supported by affidavit, within twenty (20) days from the date of service if served in Arizona, and within thirty (30) days from the date of service if served outside of Arizona ~~a response or controverting affidavits~~. A copy of each document shall be provided to the applicant's attorney or, if unrepresented, the applicant and, unless otherwise provided by local rule, to the assigned division.

5. No sooner than five (5) days after expiration of the time permitted for the filing of the response or the controverting affidavits, either party or attorney shall provide the Request for Order Granting or Denying Custody Hearing to the assigned division.

6. ~~The court, in accordance with A.R.S.§ 25-411 and without argument or hearing unless set by the court on its own motion, shall determine whether a custody hearing should be granted. A copy of the court's determination shall be mailed by the court to all persons entitled to notice. If the court determines that a custody hearing is warranted, the court shall schedule a Resolution Management Conference or evidentiary hearing.~~ Whether or not a response is filed, the court, in accordance with A.R.S.§ 25-411 and without argument or hearing unless set by the court on its own motion, shall determine whether a custody hearing should be granted. A copy of the court's determination shall be mailed by the court to all persons entitled to notice. If the court determines that a custody hearing is warranted, the court shall schedule a Resolution Management Conference or evidentiary hearing.

7. Unless otherwise ordered by the court, a post-decree or post-judgment petition that seeks to modify a child custody order and also seeks to modify or enforce other court orders, whether requested in one or more contemporaneous petitions, shall be required to comply with the provisions of this rule application to all relief requested, but shall proceed under the procedures provided in this paragraph to allow all issues to be scheduled for hearing at the same time.

E. Petition to Relocate or Prevent Relocation.

1. A petition to relocate or prevent the relocation of a minor child pursuant to A.R.S. § 25-408 shall be considered a request to modify a prior court order and shall comply with the provisions of this rule.

2. If a petition to relocate or to prevent the relocation of a minor child requests a change of legal custody, the parties shall comply with the provisions of paragraph D.

F. Petition for Modification or Clarification of Parenting Time or Visitation.

1. Any party seeking a modification or clarification of parenting time or visitation that does not involve a change of joint custody, joint legal custody, joint physical custody or sole custody, shall file with the clerk of the court, and provide a copy to the assigned division of, the following:

a. a Petition for Modification or Clarification of Parenting Time or Visitation in compliance with paragraph A that sets forth detailed facts supporting the requested modification or clarification, the ~~particular type of custody and~~ specific parenting time or visitation plan sought, and a certification whether the underlying parenting time or visitation order or agreement contains a provision requiring the parties to pursue mediation or other alternative dispute resolution process prior to requesting the court to modify or clarify the order or agreement;

b. if the applicant seeks an order of supervision or denial of parenting time or visitation, a statement in the petition detailing facts as to why unrestricted parenting time would seriously endanger the child's physical, mental, moral, or emotional health; and

c. in actions in which the parenting time or visitation order was not entered by an Arizona court, an affidavit required by A.R.S. § 25-1039.

2. A copy of the petition and affidavit (if required), and an original Order to Appear to be issued by the court shall be provided to the assigned division at the time of filing. A copy of the petition, affidavit (if required), and Order to Appear shall be served upon the opposing party within the time provided by paragraph L.

G. Petition for Enforcement of Custody or Parenting Time; Warrant to Take Physical Custody.

1. Any party seeking to enforce an existing custody, parenting time, or visitation order, shall file with the clerk of the court, and provide a copy to the assigned division of, the following:

a. a Petition for Enforcement of Custody, Parenting Time, or Visitation Order in compliance with paragraph A and all legal requirements, including any applicable provisions of A.R.S. § 25-1058, that includes detailed facts supporting a violation of the order or enforcement action and the specific remedy or remedies sought;

b. if the applicant seeks a warrant to take physical custody of a child, the petition shall comply with the provisions of A.R.S. § 25-1061.

2. A copy of the petition, an original Order for Issuance of a Warrant for Physical Custody, and an original Warrant for Physical Custody if requested in the petition, and an original Order to Appear to be issued by the court shall be provided to the assigned division at the time of filing. A copy of the petition, Order and Warrant, if issued, and the issued Order to Appear shall be served upon the opposing party within the time provided by paragraph L.

H. Other Post-Decree and Post-Judgment Petitions. Any party seeking any other post-decree or post-judgment relief not specifically addressed in this rule shall file a petition in compliance with paragraph A setting forth detailed facts supporting the requested relief, together with the specific legal authority that confers subject matter jurisdiction upon or authorizes the family court to grant the relief requested. A copy of the petition and an original Order to Appear to be issued by the court shall be provided to the assigned division at the time of filing. A copy of the petition and the issued Order to Appear shall be served upon the opposing party within the time provided by paragraph L.

I. Temporary Orders. A request for post-decree or post-judgment temporary orders, if any, shall be filed in accordance with Rules 47 and 48.

J. Contempt. An action for contempt shall comply, where applicable, with the provisions of this rule and with the provisions of Rule 92.

K. Order to Appear. An Order to Appear submitted to the court ~~for issuance~~ shall be substantially similar to ~~include the information set forth in~~ Form 14, Order to Appear Post-Judgment/Decree ~~Rule 97~~. Any original Order to Appear, other order, or warrant required to be submitted to the court for issuance under these rules shall be accompanied by two (2) or more copies of such order or warrant, equal to the number of parties in the action, to be returned to the applicant for service upon all other parties in the action entitled to notice.

L. Time for Service. Unless otherwise specifically required by law or these rules, all petitions, orders, warrants, and affidavits in support of post-decree or post-judgment relief shall be promptly served upon all opposing parties in the manner required by Rules 40, 41, 42, and 43, at least ten (10) judicial days prior to the scheduled conference or hearing, unless another specific time is ordered by the court.

M. Responses; Time for Response. Unless otherwise specifically required by law or these rules, a party served with a petition for post-decree/post-judgment relief is not required to file a formal response to the petition. All responses and affidavits required to be filed by these rules shall be filed and served upon the applicant's attorney, or if unrepresented, the applicant, within ten (10) days after service of the petition on the party, but in no event less than three (3) judicial days prior to the scheduled hearing, unless another specific time is ordered by the court.

N. Hearings on ~~Motions and~~ Petitions. Matters brought before the court by motion may be heard by oral argument without testimony. Matters that will require testimony at an evidentiary hearing shall be brought before the court by a Petition for Order to Appear and shall indicate that testimony will be required. Upon receipt of a proper Petition for Order to Appear, the court shall schedule the petition for an evidentiary hearing, a return hearing, oral argument, a ~~p~~Post-decree or ~~p~~Post-judgment Management ~~c~~Conference, mediation, or other proceeding, and issue an appropriate Order to Appear. The Order to Appear shall state the scheduled date and time and length thereof, and whether evidence will be received at the hearing or conference.

2. If the court schedules a Post-decree or Post-judgment Management Conference (PMC), each party shall within the time set by the court in the particular case, or if not time is set then not less than five (5) judicial days prior to the date of the PMC:

a. Personally meet and confer with the opposing party or parties and their counsel to resolve as many issues as possible;

If there is a current court order prohibiting contact of the parties or a significant history of domestic violence between the parties, the parties shall not be required to personally meet or contact each other in violation of the court order, but the parties and their counsel shall take all steps reasonable under the circumstances to resolve as many issues as possible;

b. Comply with all applicable disclosure requirements set forth in Rule 91(P); and

c. If specifically ordered by the court, prepare and file a written Post-decree or Post-judgment Resolution Statement as directed by the court setting forth any agreements and a specific and detailed position the party proposes to resolve all disputed issues in the case, without argument in support of the position.

3. At any Post-decree or Post-judgment Management Conference under this rule, the court may take all actions set forth in Rule 76(A)(3) applicable to a pre-decree or pre-judgment Resolution Management Conference. After any PMC held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order.

4. The parties shall file a pre-hearing statement. Unless otherwise ordered by the court, all pre-hearing statements shall be filed within the time and in the form set forth in Rule 76(C) applicable to pretrial statements.

O. Mediation. The court may require, by local rule, or on the court's own initiative, that the parties submit to mediation before any issues of custody, parenting time or visitation may be heard. ~~As to those matters for which mediation is not required, the parties, unless otherwise ordered by the court, shall personally meet and confer in a good faith effort to resolve any disputes prior to proceeding to hearing and shall be required, at the time of hearing, to avow to the court their efforts to do so.~~

P. Disclosure.

1. In any proceeding for modification of child custody or parenting time, each party shall provide to the other party or parties, the information and documentation set forth in Rule 49(B).

~~1~~2. In any proceeding for modification of child support or spousal maintenance, or for attorneys' fees and expenses, each party shall provide to the other party or parties, including the state, if applicable, copies of the following documents:

a. that party's most recently filed federal and state income tax returns, with all schedules;

b. that party's four most recent consecutive wage statements from all employment;

c. that party's most recent federal tax W-2, 1099, and K-1 forms, as applicable; and

d. in modification of child support proceedings, an employer provided statement of the cost of medical and dental insurance coverage for the parties' minor child(ren).

~~2~~3. In addition to the above documents, each party shall likewise disclose, in writing, the following:

a. all exhibits intended to be used at any evidentiary hearing; and

b. the names, addresses, and current telephone numbers of any witnesses and a description of the substance of each witness's expected testimony.

~~3~~4. Upon motion of any party, or by the court's own motion, additional disclosure may be ordered.

~~4~~–5. The provisions of this rule do not preclude any party from requesting additional documents or information through discovery procedures.

~~5~~6. Unless otherwise ordered by the court, the information and documents required to be disclosed shall be served in such a manner as to assure their receipt as soon as possible after the initiation of proceedings, but in no event less than three (3) judicial days prior to the scheduled hearing, absent good cause shown.

Q. Sanctions. If a party or attorney fails to obey a scheduling or pre-hearing order or any provision of this rule, or if no appearance is made on behalf of a party at a post-decree or post-judgment conference, an evidentiary hearing, or other scheduled hearing, or if a party or a party's attorney is substantially unprepared to participate in the conference or hearing, or if a party or party's attorney fails to participate in good faith in a conference or, hearing, or in the preparation of a resolution statement or joint pre-hearing statement, the judge, upon motion or the judge's own initiative, shall, except upon a showing of good cause, make such orders with regard to such conduct as are just, including, without limitation, those listed in Rule 76(D).

R. Dismissal of Petition For Lack of Prosecution. If a petition to enforce or modify a prior family court decree, judgment, or order is filed but not presented in proper form as required by these rules to the assigned division within one hundred twenty (120) days, is filed but not served upon the adverse party within one hundred twenty (120) days after filing, or is otherwise abandoned by the appearing parties with no activity for one hundred twenty (120) days, and there are no hearings or conferences scheduled with respect to the petition, the court may issue a notice that the petition will be dismissed by the court in no less than sixty (60) days without further notice, unless prior to the expiration of the sixty (60) days service is completed and further hearing is requested, or the court sets the petition for further proceedings. If a petition to enforce or modify a prior family court decree, judgment or order is filed but not presented in proper form as required by these rules to the assigned division within one (1) year, is filed but not served upon the adverse party within one (1) year after filing, or is otherwise abandoned by the appearing parties with no activity for one (1) year, and there are no hearings or conferences scheduled with respect to the petition, the court may dismiss the petition without prejudice and without further notice. The court may delay these dismissal dates for good cause shown upon motion of any party or on the court's initiative.

S. Attorneys' Fees, Costs, and Expenses. In any post-decree/post-judgment proceeding in which an award of attorneys' fees, costs, and expenses is an issue, both parties shall file a completed Affidavit of Financial Information. If sought by the applicant, the Affidavit of Financial Information shall be filed with the petition and served upon the opposing party along with a blank copy of an Affidavit of Financial Information. The opposing party shall respond by

filing a completed Affidavit of Financial Information that shall be provided to the applicant's attorney, or if unrepresented, to the applicant, as soon as possible after service but in no event less than three (3) judicial days prior to the scheduled hearing, unless another specific time is ordered by the court. If the opposing party initiates a request for attorneys' fees, costs, and expenses, a completed Affidavit of Financial Information shall be filed with the court and served upon the applicant's attorney or, if unrepresented, the applicant within five (5) judicial days after service and the applicant shall respond by filing a completed Affidavit of Financial Information to be provided to the opposing party's attorney, or if unrepresented, the opposing party, not less than three (3) judicial days prior to the scheduled hearing, unless another specific time is ordered by the court.

T. Stipulations. Stipulations to modify or enforce post-decree or post-judgment orders need not be notarized, except that stipulations that substantially change the terms of a custody or parenting time order shall meet the requirements of Rule 14(A).

XII. CIVIL CONTEMPT AND ARREST WARRANTS

Rule 92. Civil Contempt and Sanctions for Non-Compliance with a Court Order

A. Applicability. This rule governs civil contempt proceedings in all matters related to family law cases. The use of civil contempt sanctions under this rule shall be limited to compelling compliance with a court order or compensating a movant for losses sustained as a result of a contemnor's failure to comply with a court order. Contempt sanctions intended to punish an offender or to vindicate the authority of the court are criminal in nature and not governed by this rule. The applicability of this rule and the sanctions provided for herein shall be in addition to those procedures and sanctions set forth for a child support arrest warrant in Title 25, A.R.S.

B. ~~**Motion**~~ **Petition and Notice.** Civil contempt may be initiated by a petition ~~motion~~ that recites the essential facts alleged to be contemptuous and complies with the requirements of this rule and Rules 91(A)(1), (2), (3), (J) and (K). No civil contempt may be imposed without notice to the alleged contemnor and without providing the alleged contemnor with an opportunity to be heard. The civil contempt ~~motion~~ petition and order to show cause or order to appear containing the hearing date and time must be personally served upon the alleged contemnor in the manner required by Rules 40(C), (E) or (F), and 41(C)(1).

C. Order to Show Cause or Order to Appear. The order to show cause or order to appear must specify the time and place of the hearing and must contain substantially the following language:

> FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE COURT ISSUING A CIVIL ARREST WARRANT, OR WHERE APPLICABLE, A CHILD SUPPORT ARREST WARRANT, FOR YOUR ARREST. IF YOU ARE ARRESTED, YOU MAY BE HELD IN JAIL FOR NO MORE THAN 24 HOURS BEFORE A HEARING IS HELD.

D. Hearing. The court shall make an express finding as to whether the alleged contemnor had notice of the ~~motion~~ petition and order to show cause or appear. The court shall determine whether movant has established that a prior order was entered and that the alleged contemnor had notice of the prior order and has willfully failed to comply with the order.

E. Order and Sanctions. After hearing the testimony and evidence presented, the court shall enter a written order granting or denying the ~~motion~~ petition for contempt. An order finding the alleged contemnor in contempt shall include the following:

1. a recital of facts on which the contempt finding is based, and

2. if the court finds it appropriate, a statement setting out appropriate sanctions to obtain compliance with the order, including incarceration, seizure of property, attorneys' fees, costs, compensatory or coercive fines, parenting time to make-up for time missed due to the contemnor, parent education classes, and any other coercive

sanction or relief permitted by law, provided the order includes a purge provision as set forth in paragraph F ~~of this rule~~.

F. Purge. If the court orders incarceration, a fine, or any other sanction for failure to comply with a court order, the court shall set conditions for the purging of the contempt based on the contemnor's present ability to comply. The court shall include in its order a separate affirmative finding that the contemnor has the present ability to comply with the purge and the factual basis for that finding. The court may grant the contemnor a reasonable time to comply with the purge conditions. If the court orders incarceration but defers incarceration for more than twenty-four (24) hours to allow the contemnor a reasonable time to comply with the purge conditions, and the contemnor fails to comply within the time provided, the ~~movant~~ petitioner shall file an affidavit of noncompliance with the court. The court may then issue a civil arrest warrant. Upon incarceration, the contemnor must be brought before the court within twenty-four (24) hours for a determination of whether the contemnor continues to have the present ability to comply with the purge.

G. Review Hearings for Person Incarcerated for Contempt. If a person is incarcerated for civil contempt after hearing in a family law case, a review hearing shall be set at least every thirty-five (35) days as long as the person is incarcerated. At such hearing the court shall determine if the person has been able to comply with the purge condition or amount of release payment and review the person's present ability to comply. The court shall continue or modify the orders accordingly.

Rule 93. Seizure of Person or Property

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under circumstances and in a manner provided by law. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether the remedy is ancillary to an action or must be obtained by an independent action.

COMMITTEE COMMENT

This rule is based on Rule 64, *Arizona Rules of Civil Procedure*.

Rule 94. Civil and Child Support Arrest Warrants

A. Definitions.

1. A "civil arrest warrant" is an order issued in a non-criminal matter directing to any peace officer in the state to arrest the individual named therein and bring such person before the court.

2. A "child support arrest warrant" is an order issued by a judicial officer in a non-criminal child support matter, directing any peace officer in this state to arrest the person named therein and bring such person before the court.

B. When Issued.

1. The court may, on motion of a party or on its own motion, issue a civil arrest warrant if it finds that the person for whom the warrant is sought:

a. having been ordered by the court to appear personally at a specific time and location, and having received actual notice of such order, including a warning that failure to appear may result in the issuance of a civil arrest warrant, has failed to appear as ordered; or

b. having been personally served with a subpoena to appear in person, at a specific time and location, including a warning that failure to appear may result in the issuance of a civil arrest warrant, has failed to appear as ordered.

2. The court may in any action pursuant to A.R.S. § 25-502, on motion of a party or on its own motion, issue a child support arrest warrant as provided by A.R.S. § 25-681(A).

C. Content of Warrant. The civil arrest or child support arrest warrant shall be ordered by the judicial officer and issued by the clerk. It shall contain the name of the person to be arrested, a description by which the person can be identified with reasonable certainty, and any information required to enter the warrant into the Arizona criminal justice information system. The warrant shall command that the person named be arrested and either remanded to the custody of the sheriff or brought before the judicial officer or, if the judicial officer is absent or unable to act, the nearest or most accessible judicial officer of the superior court in the same county. A warrant that is issued pursuant to this rule remains in effect until it is executed or extinguished by the court.

D. Bond and Release Amount.

1. A civil arrest warrant shall set forth a bond in a reasonable amount to guarantee the appearance of the arrested person or an order that the arrested person be held without bond until the arrested person is seen by a judicial officer. The procedure for forfeiture of bonds in criminal cases shall apply.

2. A child support arrest warrant shall be issued in conformity to A.R.S. §§ 25-681 and 25-683. The court shall determine and the warrant shall state the amount the arrested person shall pay in order to be released from custody.

E. Time and Manner of Execution.

1. A civil arrest warrant is executed by the arrest of the person named therein. Unless the court otherwise directs upon a showing of good cause, a civil arrest warrant shall not be executed between the hours of ten p.m. and six-thirty a.m. The arrested person shall be brought before the issuing judicial officer, or if that judicial officer is absent or unable to act, the nearest or most accessible judicial officer of the superior court of the same county, within twenty-four (24) judicial business hours of the

execution of the warrant. If the person is arrested in a county other than the county of issue, the arresting officer shall notify the sheriff in the county of issue, who shall, as soon as possible, take custody of the arrested person to the issuing judicial officer.

2. A child support arrest warrant shall be executed in a time and manner in conformity with A.R.S. § 25-682.

F. Duty of Court after Execution of Warrant.

1. After execution of a civil arrest warrant, the judicial officer shall advise the arrested person of the nature of the proceedings, set the least onerous terms and conditions of release that reasonably guarantee the required appearance, and set the date of the next court appearance.

2. After execution of a child support arrest warrant, the judicial officer shall proceed in conformity with A.R.S. § 25-683.

COMMITTEE COMMENT

This rule is based on Rule 64.1, *Arizona Rules of Civil Procedure*, and A.R.S. §§ 25-681 to 25-685.

XIII. OTHER FAMILY LAW SERVICES AND RESOURCES

Rule 95. Other Family Law Services and Resources

In addition to services prescribed elsewhere in these rules, the court may consider the services set forth in this rule, if available, in a family law case.

A. Private Mental Health Services. In addition to conciliation services, the court may order parties to engage in private mental health services, including, but not limited to, counseling, custody evaluations, mental health evaluations, Parenting Coordinator services, therapeutic supervision of parenting time, and other therapeutic interventions.

B. Substance Abuse Screening and Testing in Cases Where Custody or Parenting Time Are at Issue. Upon an allegation or showing that a party has abused drugs or alcohol, including prescription medication, the court may order substance abuse screening and random testing of that party. The court shall designate the frequency of testing and apportion responsibility for payment of screening and testing.

C. Parent Education. The court shall order the parties to engage in parent education as required by Arizona law. The court may also order supplemental or additional education in appropriate cases, such as parenting skills classes and parental conflict resolution classes.

D. Supervised Exchange; Supervised Parenting Time; Therapeutic Supervision. The court shall take reasonable measures to protect the parties and their children from harm, including, but not limited to, supervised exchanges of parenting time, supervised parenting time, and therapeutic supervised parenting time.

E. Family Violence Prevention Services; Domestic Violence Shelters; Advocacy Services. Goals of the court include prevention of domestic violence and protection of parties and children from domestic violence. In pursuit of these goals, the court may implement family violence prevention services, including, but not limited to, family violence prevention centers and victim advocacy services. If the court finds evidence of domestic violence in cases, the court may refer parties to services that the court deems appropriate for victims and batterers.

F. Batterer Intervention and Prevention Programs. If the court finds evidence that a party has committed domestic violence or may commit domestic violence in the future, the court may order the person to attend a Batterer Intervention and Prevention Program approved by the Arizona Department of Health Services. A list of providers is available at the Arizona Department of Health Services website.

G. Real Estate Special Commissioner. The court may appoint a real estate special commissioner, in accordance with local rule or policy and procedure, to assist the parties in the division and disposition of community real property when the parties are otherwise unable to agree on such issues.

H. Title IV-D Services. Title IV-D Services may be provided in a Title IV-D case. A person may apply for Title IV-D Services at the Division of Child Support Enforcement (DCSE) of the Department of Economic Security.

Rule 96. [Reserved]

XIV. FAMILY LAW FORMS

RULE 97. Family Law Forms ~~and Appendix~~

~~**A. Family Law Forms**~~

The forms listed ~~and included~~ in this rule are the recommended forms and meet the requirements of these rules. Whenever these rules require use of a form that is "substantially similar" to a form contained in this rule, such language means that the content of the~~se~~ form~~s~~ may be adapted to minimize or delete information that does not apply to a particular case, ~~and to facilitate the use of automated or prompted computer forms programs to prepare streamlined and concise forms,~~ provided that all information contained in the recommended form and applicable to the case is included. The deletion of information ~~required by a form~~ contained in the recommended form or the failure to complete a portion of ~~a~~ the recommended form is a representation to the court and to all adverse parties that the question(s) or item(s) are not applicable. ~~Any such form may be modified for submission at times and under circumstances provided for by an Administrative Order entered by the presiding judge of the county or the presiding judge's designee~~. These forms and other family law forms are available at ~~the~~ ~~C~~court~~'s~~ ~~S~~self-~~S~~service ~~C~~centers, if any, or at the Supreme Court of Arizona's website: ~~http://www.supreme.state.az.us/nav2/selfserv.htm~~ http://supreme.state.az.us/selfserv/ARFLP_forms.htm. These forms may be modified ~~from time to time~~ by Administrative Order of the Supreme Court of Arizona, and the ~~modified~~ most current forms will also be available at this website and court self-service centers.

COMMITTEE COMMENT

This rule is based on Rule 84, *Arizona Rules of Civil Procedure*.