

## PCBA Family Law Committee Review and Comments for Proposed Changes to Local Rules

*The following family law attorneys submit these comments to the proposed Local Rules for Pima County.*

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As a general comment regarding the effective date of these rules, we suggest these local rules should not become effective until the task force completes the revisions of the Arizona Rules of Family Law Procedure. This delay will ensure that the local rules are consistent with the changes adopted at the state level and reflect the correct Rule numbers.

### **Rule 1 - General Administration**

- Section 1.8 mentions only the steps counsel should take and does not mention self-representing parties whom may also have a calendar conflict.
- Similarly, Section 1.9 does not state that a self-representing party may also ask for a change of judge.
- Section 1.11, as well as various other requirements found in Rule 3, requires delivery of documents to the assigned division. As a general matter, this requirement is difficult for parties that are self-representing especially when time limits are involved. There needs to be a smoother mechanism for delivery of documents that is coordinated with the clerk's office to make certain self-representing parties are able to comply with the deadlines found throughout the rules.
- Section 1.17 does not include any mention of exceptions for cases involving domestic violence and/or orders of protection and the exceptions afforded parties in these situations.

### **Rule 2 – Civil**

### Rule 3 - Family Law

- 3.4(A) provides too long of a time frame for filing a request for a telephonic appearance. The requirement should be 15-20 days in advance of the settlement conference rather than 30 days.
- 3.4(C) should identify the new ARFLP 67.1 and 67.2.
- 3.5(A) needs to clarify that if the Affidavit of Financial Information is filed, no other affidavit is not required. As it is currently written, parties whom are self-representing may believe they need to file both forms if child support AND spousal maintenance are at issue.
- 3.5(A)(3)(a) should use bold lettering for the words “**but not file**” and subsection (i) regarding the financial affidavit should be deleted. 3.5(A) fully addresses the financial affidavit requirement. If section (i) is left as it is, it currently contradicts 3.5 (A) by including the affidavit in the items that should not be filed.
- 3.5(A)(3)(b) also should use bold lettering for the words “**but not file**” and has the same problem mentioned above with subsection (i) that also should be eliminated.
- 3.5(C) The process for paperwork to reach a self-represented party is significantly slower and unpredictable making compliance with rule deadlines challenging if not impossible for self-representing parties.
- 3.5(E) The party filing should be required to attach a copy of Local Rule 3.5 to the order to appear when serving the opposing party.
- 3.5(F) These sanctions are harsh; especially for a self-represented party who may not feel they had fair access to justice if given this harsh of a penalty, particularly if no prejudice or harm is shown to the other party.
- 3.6(B) the word “may” should replace the word “will” as far as consolidation since later in the paragraph it states that consolidation should only occur “if appropriate.” Using the word “will” creates a mandatory consolidation that is potentially abrogating the power of Superior Court. Also any legal decision-making and parenting time orders issued by the juvenile court will need to be handled in a separate minute entry that will not compromise the sensitive and confidential information of a dependency case. The changes proposed in ARFLP allow for Juvenile Court to create a separate case for a paternity matter when there is no existing case in Superior Court.

- 3.7 (A) contains a reference to “bifurcated” portions of a trial, and it is an unnecessary reference. There is also no mention of domestic violence or order of protection exceptions.
- 3.7 (C)(4) I would add the end, “that addresses the issues pending.”
- 3.8 raises a serious issue of notice because the respondent is never given formal notice that this fee must be paid to receive an affirmative order for joint legal decision-making. Further, the rule needs to also include that a request to change one’s name also triggers the need to pay the appearance fee. This rule also creates a fairness issue, as it is possible to imagine a respondent purposely not paying the appearance fee blocking the petitioner from finalization of the action, particularly when the petitioner plead joint legal-decision making.
- 3.9 (B) There is a concern about the protections afforded in cases that include protected addresses if this disclosure requirement is kept in the rule.
- 3.10 is generally overly complicated. This Rule should also add Rules 67.1 and 67.2 of the AFLRP or written agreement as means to avoid the mandatory mediation. This Rule is also confusing. For example, 3.10(B)(1)(c) is nested under the heading “By the Court” yet states that the “Request for Mediation must be submitted to the Court when a post-decree petition to modify parenting time is filed.” This section also fails to mention that parties may also reach an agreement on their own without the assistance of mediation as long as the agreement is in writing, in which case, formal mediation would not be required. 3.10(B)(1)(b) should state that a party may not file a Motion to Set or a Controverting Certificate if mediation has not been attended. 3.10(B)(2) is inconsistent with 3.10(A) and fails to mention the parenting class requirement. 3.10(D) sets out two different procedures for represented parties versus self-representing parties and it begs the question whether it is fair to have a different process (i.e. waiting period after signing the mediation agreement) based on representation. This is also one of the rules that specifies a time period by which documents must be delivered to the appropriate division (5 days). The same issue raised earlier in these comments regarding self-representing parties is of concern here. Will there be a mechanism in place to ensure that these documents are timely delivered?

## **Rule 4—Probate and Mental Health**

No Comments for Rule 4

## **Rule 5—Criminal**

No Comments for Rule 4

## **Rule 6—Juvenile Court**

- 6.2 (B) states that the Court “shall” consolidate the family law matters. This word should be changed to “may” so that the consolidation only occurs when appropriate.