Justice Rebecca White Berch (ret.), Chair,
Judge Mark Armstrong (ret.), Co-Chair
Task Force on the Arizona Rules of Family Law Procedure, Petitioner
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SUPREME COURT OF ARIZONA

PETITION TO AMEND THE ARIZONA RULES OF FAMILY LAW PROCEDURE and ARCAP 9	)	Supreme Court No. R-17-0054

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the Task Force on the Arizona Rules of Family Law Procedure ("the Task Force") petitions this Court to amend the Arizona Rules of Family Law Procedure ("family rules" or "family law rules") by restyling, simplifying, and clarifying language of the existing rules, and by making substantive changes that promote Rule 1's goals of securing "a just, prompt, and inexpensive determination of every [family law] action and proceeding."

Because the proposed amendments concern ***all*** the current family law rules, this petition presents the revisions as a complete new set of rules, rather than as individual rule amendments. Appendix A to this petition contains a clean version of the proposed rules. The Task Force decided against preparing a "redline"

version because the changes are so extensive that a redline would be more confusing than helpful.

Petitioner also proposes conforming changes to Rule 9 of the Arizona Rules of Civil Appellate Procedure, as shown in Appendix B. Appendix C is a table that correlates the proposed family law rules with the current family rules and with the civil rules. Because this table might be further revised, it is shown in a separate appendix, but the Task Force intends to incorporate the table within its final version of the family rules.

Section 1: Background. For years Arizona had no procedural rules specifically for family law cases. The history of Arizona's family law rules began in 2003, when the Arizona Supreme Court entered Administrative Order No. 2003-63 and created a Committee on Rules of Procedure in Domestic Relations Cases. In 2005, that Committee proposed new rules of family law procedure (R-05-0008) that borrowed heavily from the Arizona Rules of Civil Procedure in areas common to both case types, and established new rules for other procedures used only in family law cases. These rules became effective on January 1, 2006.

Under Strategic Agendas of the current and the former Chief Justice, the Court has undertaken to restyle procedural rules to make them simpler, better organized, consistently formatted, and more user-friendly. The Court has adopted restylings of the Arizona Rules of Evidence (effective 2012), Justice Court Rules

of Civil Procedure (2013), Rules of Civil Appellate Procedure (2015), Rules of Protective Order Procedure (2016), Civil Procedure (2017), and Criminal Procedure (2018).

On December 21, 2016, the Court entered Administrative Order No. 2016-131, which established the Task Force on the Arizona Rules of Family Law Procedure and appointed its members. The Task Force is co-chaired by a former Supreme Court chief justice and a retired superior court judge who currently serves as a Supreme Court staff attorney. Task Force membership includes the presiding family court judge in Maricopa County and two family court commissioners from Pima County. It also includes two Division One judges who formerly had family calendars as superior court judges in Maricopa County, and a Division Two judge who formerly had a family calendar in the superior court of Pinal County. Also serving on the Task Force are Maricopa County's Family Court Administrator and a representative from that court's Clerk's office, Pima County's Conciliation Court Director, and the chief counsel of the Arizona Attorney General's Child Support Enforcement Unit. There are ten highly experienced attorneys on the Task Force (eight from Maricopa County, one from Pima County, and one from Yuma County), most of whom are certified family law specialists.

Administrative Order No. 2016-131 directed Task Force members to review the current family law rules and "to identify possible changes to conform to

modern usage and to clarify and simplify language." The Order included a goal for the Task Force to submit a rule petition by January 10, 2018, but because of the scope of this project, the Task Force requested an extension of time; and by an Order entered in R-17-0054 on November 30, 2017, this Court extended the filing date until March 31, 2018.

Section 2: General Principals. Members were mindful that a substantial number of parties in family proceedings are self-represented. (Both parties are self-represented in more than 80% of the cases, and one side has an attorney in about 10% of the cases. The percentage of cases in which both parties are represented by counsel is in the single digits.) The Task Force accordingly adhered to the following eight principles, which were also used by the Civil and Criminal Rules Task Forces:

1. The rules should be clearly written and not present traps for the unwary.
2. If comments to a rule are necessary to understand the rule, then the rule is incomplete or unclear. Substantive matters belong in the rules, not in the comments.
3. If existing case law clarifies or interprets an ambiguity in a current rule, an effort should be made to remove the ambiguity and, if possible, to incorporate interpretative case law.
4. The rules should accommodate electronic filing and document management.
5. The rules should recognize best practices statewide.

6. Substantive changes should be made cautiously, and only if a consensus exists in favor of it. If substantial disagreement exists over a proposed substantive change, it should be presented in a separate rule petition to permit a full airing of views focused just on that change.

7. To avoid unnecessary confusion, rule renumbering should be minimized. Often cited rules should retain the existing rule number, if possible.

8. The family rules should be freestanding and generally should not incorporate by reference other rules of procedure. However, the rules in Appendix A reflect some exceptions (*e.g.*, family Rule 33 cross-references civil rules regarding counterclaims, third-party claims, joinder, and intervention, and Rule 41(n) references the civil rules if there are special circumstances for service of process).

Section 3: Methodology. There currently are 101 rules of Family Law Procedure, including three rules (Rules 21, 38, and 96) that are "reserved." The 101 rules are grouped into 14 parts. The Task Force Chair divided the 20 Task Force members into 4 workgroups and assigned each workgroup two or more parts of the rules. Each workgroup included at least one judicial officer. Workgroups met 59 times between March and December 2017. The workgroups reviewed the rules in depth, and then presented proposed revisions to the full Task Force.

The Task Force met twelve times during 2017, with most meetings lasting a full day. Members of the public were present for all or parts of many Task Force meetings. Revisions to some rules were minor or stylistic, requiring little discussion. Other rules were complex or controversial, and were the subject of intense discussions at two or more meetings. When also considering what the

members did outside of meetings—reviewing drafts, researching law, editing documents, as well as traveling to meetings—the appendices represent an investment of more than two thousand hours of time.

Section 4: Restyling Changes. The proposed amendments, like other recently adopted rule sets, include stylistic revisions that make the rules more comprehensible and user-friendly. The elements of restyling include:

1. using informative headings and subheadings;
2. breaking up long sentences, or making them shorter;
3. converting a lengthy rule into shorter subparts, which makes it easier to find provisions;
4. using lists;
5. avoiding repetition;
6. using "plain English" and the active voice;
7. stating things in a positive form; and
8. avoiding legal jargon and ambiguous terminology, including the word "shall" ("shall" is replaced in the proposed amendments with "must," "may," "should," or "will," depending on the context).

The proposed rules also employ consistent formatting and nomenclature. The stylistic revisions generally follow the conventions recommended in Bryan Garner's *Guidelines for Drafting and Editing Court Rules* (1996).

Section 5: Substantive and Organizational Changes. Each of the family law rules was restyled, but many of the proposed rules also include substantive and

organizational changes. The following narrative illustrates these changes, but because there are more than one hundred restyled rules, the narrative is not exhaustive.

Part I: General Administration (Rules 1 through 22). The Task Force relocated provisions currently found in Rule 2 regarding the applicability of civil and local rules to Rule 1 ("scope and applicability of these rules"). Doing so focuses Rule 2 ("applicability of the Arizona Rules of Evidence") on the Rules of Evidence. Rule 2's provisions have been reorganized into sections concerning the effect of a Rule 2(a) notice, the effect of no notice, records of regularly conducted activity, and untimely disclosure. Revised Rule 2 no longer requires the court to admit affidavits of financial information or expert's reports, even if an expert's report was prepared pursuant to a court order. The hallmarks of admissibility under the revised rule are relevance, reliability, and timely disclosure.

Rule 5.1 ("simultaneous dependency and legal-decision making/parenting time proceedings") has a new provision that requires parties to notify the family division of a pending dependency proceeding, thereby making the family division aware of the juvenile court proceeding. Like the restyled civil rules, but unlike the current family rule that incorporates former Civil Rule 42(f) by reference, the proposed family rules have new and separate rules for a change of judge: Rule 6 ("change of judge as a matter of right") and Rule 6.1 ("change of judge for cause").

Current Rule 9 ("duties of counsel") would become "duties of parties or counsel" because it imposes duties on both. New Rule 9(c) adds a requirement for a "good faith consultation certificate" in specified circumstances. This requirement, which corresponds to Civil Rule 7.1(h), includes an exception for cases in which there is domestic violence. The Task Force proposes bifurcating current Rule 10 ("representation of children; minors and incompetent persons") into two new rules: Rule 10 ("representation of children") and Rule 10.1 ("court-appointed advisor"). Issues of incompetence would be governed by Rule 37 ("substitution of parties: death, incompetency, and transfer of interest").

Proposed Rule 12 ("court interviews of children") would require the recording of an interview, unless the parties stipulate otherwise; but notwithstanding, the proposed rule would require recording of an interview conducted by a judicial officer. The Task Force proposes relocating the substance of current Rule 17 (now, "limitation on examination of witness") to Rule 22 ("conduct of proceedings"). New Rule 17 ("sealing, redacting, and unsealing court records") is modeled on current Maricopa County Local Rules 2.19 and 2.20, which members preferred over new Civil Rule 5.4 because of the relative simplicity of the local rules. Current Rule 20 is a one-sentence rule on electronic filing. Restyled Rule 20 incorporates the formatting requirements currently found in Rule 30 ("form of pleading") and includes provisions for paper and electronic

filing. The Task Force proposes relocating Rule 23.1 on improper venue from Part II, where it currently is, to Rule 21 of Part I, because the Task Force believes improper venue concerns administration rather than pleading.

Part II: Pleadings and Motions (Rules 23 through 35). The Task Force concluded that these rules were not in a sensible sequence, and that they would be simpler and more logical if they were reorganized and, in some instances, consolidated. Therefore, the Task Force proposes that

Rule 23 (based largely on current Rule 24) concern pleadings;

Rule 24 (based on current Rule 29) concern the contents of pleadings;

Rule 25 (based on current Rule 26) concern additional filings;

Rule 26 (based on current Rule 31) concern signing pleadings and other documents;

Rule 27 (based on current Rule 27) concern service of the petition;

Rule 28 (based on current Rule 34) concern amended and supplemental pleadings; and

Rule 29 (based on current Rule 32) concern defenses and objections.

Current Rule 23 illustrates the need for reorganizing these rules. It provides:

> 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.

The second and third sentences of the current rule are unrelated to the rule's title, "commencement of action." The Task Force accordingly relocated the substance of those two sentences to proposed Rule 9 ("duties of parties or counsel"). The Task Force restyled the one remaining sentence of current Rule 23 and added additional substance currently located in Rule 24. The title of proposed Rule 23 is "pleadings; petition and response." The proposed rule begins:

> **(a) Petition.** A 'petition' is the initial pleading that begins a family law case or a post-decree matter, as described in this rule. A party begins an action by filing a verified petition seeking:

The proposed rule then identifies 10 petitions that can initiate a family law action (for example, annulment, dissolution, separation), including a new category not specified in the current rules, "relief otherwise authorized by statute."

The family law cover sheet, currently the subject of a single-sentence Rule 25, would become section (e) of proposed Rule 25 ("additional filings"). Proposed Rules 25 and 27 ("service of the petition"), in conjunction with Rules 23 and 40 ("summons"), differentiate petitions that must be served with a summons from petitions served with an order to appear. These rules make a substantive change to current Rules 26(B), 27(B), and 28, which require a summons and written response to a petition for legal decision-making and parenting time by a parent. Under the restyled rules, that petition would be served with an order to appear, and the respondent could, but would not be required to, file a response.

Proposed Rule 33 is titled "third-party rights and other claims in an existing action." Proposed Rule 33(a) governs intervention by a person other than a legal parent in an existing action, and Rule 33(b) governs intervention by the State. Proposed Rule 33(c) concerns "other parties or claims." Rule 33(c) references Civil Rules 13, 14, 18, 19, 20, 21, 22, and 24 regarding counterclaims, third-party claims, joinder, interpleader, or intervention, procedures that are infrequently used in family cases. Proposed Rule 35 ("family law motion practice") includes a new section (d) on agreements to extend the time for filing, which is an analog of recently adopted Civil Rule 7.1(g). New Rule 34 concerns continuances of a trial, hearing, or conference, as well as scheduling conflicts. New Rule 35.1 addresses motions for reconsideration.

Part III: Parties (Rules 36 through 38). The Task Force restyled Rule 36 ("real party in interest") and Rule 37 ("substitution of parties: death, incompetency, and transfer of interest"), but it did not intend substantive changes to those rules. Rule 38 currently is, and remains, reserved. But the Task Force questioned the merit of retaining current rule 39 ("proof of authority by attorney for respondent not personally served") and it proposes abrogation of that rule. It also proposes to move Rule 39 into Part IV, as discussed below.

Part IV: Service (Rules 39 through 43.1). One issue that has confounded rules drafters is the dual meaning of the term "service." On the one hand, it can

mean delivery of a summons and complaint by a process server or by other formal methods. On the other hand, it can refer to delivery of court documents by mail following the completion of the initial service. The Task Force addressed this ambiguity in a proposed new Rule 39 titled "meaning of service." This rule notes that a party must provide every other party with an exact copy of every filed document, but further explains that "the method by which that document must be provided depends on the type of document filed." Rule 39 proceeds to differentiate (1) service of a summons and petition (or an order to appear and a petition); (2) service of documents filed in the course of a case; and (3) service of contempt petitions. Rule 39 adds that a party may accept service under the first and third scenarios.

The subject of Rule 40 is the summons. Proposed Rule 40(f) has provisions for accepting service, but to avoid confusion and differing requirements for accepting and waiving service, which are both allowed under the current rule, the proposed rule eliminates waiver of service.

Current Rule 41 concerns "service of process within Arizona," while current Rule 42 concerns "service of process outside of State." The Task Force found considerable redundancy in these two rules. To avoid duplication, they merged Rule 41 and Rule 42 provisions into a new Rule 41 entitled "service within and outside Arizona." But there are two notable substantive changes. First, current

Rule 41(N) ("service by publication; return") includes the following introductory sentence:

> 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.

A committee comment to current Rule 41 provides:

> 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 Task Force revised the publication provisions of Rule 41. It also proposes abrogating the comment shown above by substituting a new comment to the 2019 amendment, as follows:

> Former Rules 41 and 42 imposed limitations on the court's personal jurisdiction over a party when the party was served by publication. Revised Rule 41 deletes those limitations, and this rule now follows the holding in *Master Financial, Inc. v. Woodburn*, 208 Ariz. 70, 74, 90 P.3d 1236 (App. 2004), paragraphs 15-22. Nevertheless, service by publication is subject to subsequent challenge if it does not satisfy due process standards of being reasonably calculated to give notice to the party being served and providing the best practicable notice under the circumstances. See Rules 83(d) and 85.

Accordingly, in appropriate circumstances and even when service is made by publication under the proposed rule, the court could enter orders concerning paternity, child support, division of marital property, or other issues. These orders would be subject to subsequent due process challenges by a defaulted party.

The other substantive change in proposed Rule 41 is a new section (n) intended to cover service in uncommon situations. Section (n) provides:

(n) Service in Other Circumstances. Service on a person or entity not described in Rule 41 may be made as provided in Civil Rule 4.1 or 4.2.

Rule 42 would no longer include any content and would be "reserved."

For clarity and ease of use, the Family Rules Task Force has bifurcated Rule 43 into a rule on service and another rule on filing, as the Civil Rules Task Force did with former Civil Rule 5. To assist self-represented litigants in family court—and like restyled Civil Rule 5(c)(3)—proposed Rule 43(b)(3) includes a brief form for a certificate of service. And like Civil Rule 5.1(b)(4), proposed Rule 43.1(b)(4) contains a provision concerning the effective date of a filing by an incarcerated party. Rule 43.1 also includes a new section (g) that permits the clerk to treat as confidential any affidavit of financial information or health record.

Part V: Default Decree and Consent Decree, Judgment, or Order; Dismissal (Rules 44 through 46). Current Rule 44 ("default decree") is so long and overloaded with content that the Task Force trifurcated it. Proposed Rule 44 ("default") deals solely with the application for default and related matters. Because the clerk does not perform any ministerial act to "enter" a default, proposed Rule 44, unlike corresponding Civil Rule 55, would not refer to "entry of default." Rather, proposed Rule 44(a)(4) provides that "a default is effective 10 days after the application is filed." (Compare this to Civil Rule 55(a)(4): "A default is effective 10 days after the application for entry of default is filed.")

Proposed Rule 44.1 ("default decree or judgment by motion and without a hearing") reorganizes and clarifies the procedures in current Rule 44(B)(1), while proposed Rule 44.2 ("default decree or judgment by hearing") does the same for current Rule 44(B)(2). The provisions of current Rule 44(B)(4), about informing the defaulting party of the default decree or judgment, appear in both proposed new rules.

Proposed Rule 44.1(f) ("spousal maintenance") contains a significant substantive change to permit a party who requests spousal maintenance to proceed by motion without a default hearing and obtain an award of maintenance, provided the party files a new Form 6 ("default information for spousal maintenance") that contains sufficient financial and other information to support the award. If the party's Form 6 is incomplete or deficient, the court will set the matter for a default hearing under Rule 44.2. But if the form contains sufficient information, the court has an adequate basis for making the requisite findings under A.R.S. § 25-319(A) and (B), and the petitioner would not be required to attend a default hearing.

Proposed Rule 44.2(e) substantially simplifies the provisions of current Rule 44(B)(3) concerning a past child support judgment.

Part VI: Temporary Orders (Rules 47 through 48). The Task Force also proposes to trifurcate current Rule 47 ("temporary orders") into Rule 47 ("motions for temporary orders"), Rule 47.1 ("simplified child support orders"), and Rule

47.2 ("motions for post-decree temporary legal decision-making orders"). Among the issues the Task Force discussed concerning Rule 47, two are most notable.

First, on receiving a motion for temporary orders, some judges set a return hearing, while others set an evidentiary hearing, and still others set a hearing at which the court may or may not receive evidence. The third scenario, which is not uncommon, leaves counsel wondering whether to have their witnesses prepared and available. In response to these variations, the Task Force proposes that Rule 47(c) provide for a resolution management conference (RMC) for the purpose of facilitating agreements between the parties, while still leaving room for judicial discretion to hold an evidentiary hearing if that becomes necessary, or to schedule an evidentiary hearing initially if it appears that the RMC "would not serve the interests of efficiency."

Second, and while current Rule 47(E) requires service of the motion for temporary orders "at least ten (10) judicial days" before the scheduled hearing, the Task Force wanted to encourage more adequate notice. Accordingly, proposed Rule 47(d) ("service") provides in part:

> The moving party must make good faith efforts to complete service promptly and, absent good cause, must complete service within 5 days after receipt of the issued order to appear and no later than 14 days before the date set in the order.

Part VII: Disclosure and Discovery (Rules 49 through 65). Many of the restyled rules in Part VII are patterned on restyled Civil Rules concerning

discovery, but with modifications that the Task Force believed were appropriate for family proceedings. Proposed Rules 49, 50, 52, 60, 63, and 65, however, deserve mention.

Current Rule 49 ("disclosure") requires parties to file a resolution management statement with their initial disclosures. The Task Force believed that filing a resolution statement concurrently with disclosures was not particularly practical or helpful. Accordingly, the Task Force proposes that the time for doing so be set at 30 days after exchanging disclosures, unless the court orders otherwise. And notwithstanding an amendment to Civil Rule 26.1 that becomes effective on July 1, 2018, which shortens the time for serving civil disclosure statements to 30 days after the filing of a responsive pleading, the Task Force recommends that the 40-day time limit in current family Rule 49 be retained in restyled Rule 49.

The Task Force proposes that Rule 50, currently titled "complex case disclosure," be retitled "complex case designation." The new title reflects a change in how a case would receive a complex designation. Currently, a party can file a notice designating a case complex. Under the proposed rule, a party would file a motion and the court would have discretion to make the designation. The proposed rule also includes factors that warrant a complex designation, and describes court action following a designation, such as conducting a mandatory scheduling conference and providing a minimum of 12 hours for trial.

Under Civil Rule 45, objections to a subpoena commanding attendance at a deposition, hearing, or trial must be made by timely motion. The Task Force considered this approach for Family Rule 52 ("subpoena"), but declined it. Instead, the proposed rule follows the current rule: a person who submits a written objection to a family law subpoena need not comply, and it is up to the party serving the subpoena to seek a court order compelling compliance.

By comparison, the Task Force followed the lead of the Civil Rules Task Force, which merged civil rules 33 and 33.1 on interrogatories into a unified Rule 33. The Task Force proposes a similar merger of Family Rules 60 ("interrogatories to parties") and 61 ("uniform and non-uniform interrogatories; limitations; procedure") into proposed Rule 60. Proposed Rule 60 would retain its current title, while proposed Rule 61 would be "reserved."

Task Force discussions concerning Rule 63 (as proposed, "physical, mental or behavioral health, and vocational evaluations") concluded by adding the words "behavioral health" to the title and in the body of the rule. The proposed rule differentiates a party's ability to record an exam, or to have a representative present during the exam, based on the type of exam. For a physical or vocational exam, the examined party would have a right to have a representative present and to make a video or audio recording, unless the court determines it might adversely affect the outcome of the exam. In comparison, at a mental or behavioral health

exam, the examined person would have neither of those rights without the examiner's agreement or a court order.

Proposed Rule 65 ("failure to make disclosures or to cooperate in discovery; sanctions") condenses and clarifies several provisions and phrases of the current rule. A sanction in the current rule of "refusing to allow the disobedient party to support or oppose designated claims or defenses" would become in the proposed rule "prohibiting the disobedient party from supporting or opposing designated arguments." A current sanction of "dismissing the action or proceeding" would contain the limitation, "unless dismissal would be contrary to the best interests of a child."

Part VIII: Settlement and Alternative Dispute Resolution ("ADR"). Some of the rules in this section were reorganized. For example, Rule 67, which currently is a lengthy rule, as proposed would simply advise that ADR includes a collaborative law process under Rule 67.1, family law arbitration under Rule 67.2, private mediation under Rule 67.3, and a settlement conference under Rule 67.4. Rule 67.3 and 67.4 are new, and derive, respectively, from current Rules 67(B) and 67(C). Rules 67.1 and 67.2 are uniform rules, and restyling was limited to such things as making their formats consistent with other rules, and changing "shall" to must, may, will, should, or another appropriate term. However, the Task Force

deleted Rule 67.2(g)(3) and a corresponding provision in Rule 67.2(h)(5) that permitted the court to choose an arbitrator for the parties.

Rule 68 continues to be dedicated to the conciliation court, but the Task Force changed the word "counseling," which is used in the current rule, to "services" in the proposed rule, because some conciliation courts do not utilize licensed counselors or provide counseling. Subpart (a)(1) of Rule 69 ("binding agreements") includes a current requirement that an agreement be in writing, but adds a new requirement that the writing be signed by the parties personally or by counsel on a party's behalf. A new section (b) provides that "an agreement under this rule is not binding on the court until it is submitted to and approved by the court."

The Task Force restyled and made minor changes to Rule 72 ("family law master) and Rule 74 ("parenting coordinator"), but it did not intend substantive changes. The Task Force proposes a new Rule 72.1 ("retirement, benefits, stock options, and other employment related compensation") as a way for the court to appoint professionals with special expertise, particularly regarding qualified domestic relations orders. The professional would calculate how to divide, or implement the division of, an asset that the court has ordered divided. But if the professional determines that a division requires the use of discretion, the professional must request court approval.

The Task Force revised the role of a family law conference officer under Rule 73. Proposed Rule 73 curtails the conference officer's quasi-judicial function. The Task Force believes that the conference officer should assist the parties, but should not forward recommendations to the assigned judge.

The Task Force found no practical benefit in current Rule 75, a one-sentence rule titled "plan for expedited process," so it proposes abrogating this rule.

Part IX: Pretrial and Trial Procedures (Rules 76 and 77). The Task Force also proposes to trifurcate current Rule 76 ("pretrial procedures"). Proposed Rule 76 ("resolution management conference") is based on current Rule 76(A); proposed Rule 76.1 ("scheduling conference; scheduling statement; pretrial statement") is based on current Rule 76 (C); and proposed Rule 76.2 ("sanctions for failure to participate in a court proceeding") is based on current Rule 76(D). Proposed Rule 76.1 differentiates a scheduling statement, which a party would file for a scheduling conference, from a pretrial statement, which a party would file for a trial. These statements would be tailored to the type of request before the court.

Part X: Judgments and Decrees (Rules 78 through 90). The Task Force made substantial changes to two pairs of rules in this part: Rules 78 and 81, and Rules 83 and 84.

Proposed Rule 78 is titled "Judgments, Attorney Fees, Costs, and Expenses." Rule 78(a) defines "decision" and eliminates the second sentence of the current

rule ("a judgment may not contain a recital of pleadings, etc."). The proposed rule includes a new section (c) titled "judgment of all claims, issues, and parties," which corresponds to Civil Rule 54(c) and should help in determining when a family court judgment is final and appealable. Proposed Rule 78(e) ("attorney fees, costs, and expenses") reflects the Task Force response to *Bollermann v Nowlis,* 234 Ariz. 340 (2014), and pending rule petition R-16-0020. Proposed Rule 78(e) requires that a claim for attorney fees, costs, and expenses be made in the pleadings or by motion before trial, and, because those items may be considered during trial, they also must be included in the pretrial statement. If not raised, and absent good cause, the claim is waived. The court must include the determination of the claim in the judgment, and if the judgment omits the determination, the claim is deemed denied unless a party files a Rule 83 motion within 15 days after entry of the judgment. Finally, Rule 78 sections (f), (g), and (h) are imported from current Rule 81 ("entry of judgment"), so all the provisions concerning judgment are contained in a single rule, Rule 78. Rule 81 would be "reserved."

Judges in family proceedings may order supplemental hearings, but they don't grant new trials. Accordingly, the Task Force proposes a change in the title of Rule 83, from "motion for new trial or amended judgment" to "altering or amending a judgment; supplemental hearings." Because the time to file a Rule 83

motion may not be extended by stipulation or court order, the Task Force recommends extending the time for filing the motion from 15 days after the entry of judgment, as the current rule provides, to 25 days. This would accommodate situations where, for example, a transcript is not immediately available. Within 15 days after the filing of a Rule 83 motion, the proposed rule provides that the court must either summarily deny the motion or set a deadline for a response. To mitigate the possibility of successive Rule 83 motions, the proposed rule would require a response to address not only issues raised in the motion, but also issues that might arise if the court grants the motion.

The Task Force also proposes modifying Rule 84, now titled "Motion for Reconsideration or Clarification," by, among other things, relocating the provisions on reconsideration to Rule 35.1. Rule 35.1 would encompass not just reconsideration of trial motions but other motions as well. On a Rule 84 motion for clarification, proposed Rule 84(d) expressly provides:

> A party may not combine a motion filed under this rule with a motion under Rule 83. On a motion for clarification, the court may not open the judgment or accept additional evidence as it can under Rule 83.

The proposed rule would permit the court to summarily deny a Rule 84 motion.

Proposed Rule 85(a) requires, rather than merely permits, a court to "correct a clerical mistake or a mistake arising from oversight or omission if one is found in

a judgment, order, or other part of the record." This change recognizes the Court's holding in *Vincent v. Shanovich*, 243 Ariz. 269 (2017).

Part XI: Post-Decree/Post Judgment Proceedings (Rules 91 through 91.6). Current Rule 91 is lengthy and repetitious, and it is not user friendly because the description of post-decree procedures begins in section (A), but does not resume until section (I). The confusing structure makes compliance difficult for litigants and, as a result, portions of the current rule are commonly ignored.

The workgroup addressed these issues by reorganizing the contents of the rule. Proposed Rule 91 includes provisions applicable to any post-judgment petition. It then relocates into new Rules 91.1 through 91.6 provisions applicable to specific types of modification or enforcement actions. (Rule 91.1 is to modify spousal maintenance or child support; Rule 91.2, to enforce spousal maintenance or child support; Rule 91.3, to modify legal decision making or parenting time; Rule 91.4, to relocate or prevent relocation; Rule 91.5, to enforce legal decision-making or parenting time; and Rule 91.6, for other post-judgment petitions).

Proposed Rule 91(i) describes the court's process upon receiving a post-decree petition:

> Upon receipt of the petition and proposed Order to Appear, the court must review the petition and (a) reject the petition for failure to state grounds upon which relief can be granted, or (b) issue the Order to Appear. If the court rejects the petition, the court must provide the applicant with an explanation of the deficiency and provide an opportunity to correct the deficiency within 30 days after the date of the rejection notice. In deciding

> whether to reject a petition, the court cannot assess credibility or weigh evidence. If the court issues the Order to Appear, it must set a resolution management conference or evidentiary hearing, as appropriate. No evidence may be taken at a resolution management conference except under emergency circumstances.

Proposed Rule 91(d) removes an obstacle to post-decree proceedings, namely, a provision in many decrees requiring the parties to submit to mediation before they may file a proceeding to modify legal decision-making or parenting time. The Task Force did this because the current language permits a non-cooperating party to prevent the filing of a petition by simply refusing to submit to mediation. The proposed rule defers mediation and includes this new provision:

> No party may be required to submit to mediation before filing a petition for modification of legal decision-making or parenting time. However, a local rule or court order may require the parties to submit to mediation before the court will hold an evidentiary hearing on any legal decision-making or parenting time issues.

Part XII: Civil Contempt and Arrest Warrants (Rules 92 through 94). Current Rule 92 ("civil contempt and sanctions for non-compliance with a court order") refers to "orders to show cause or orders to appear." The Task Force eliminated the outdated reference to orders to show cause in its revised rule and so has the shortened title to "civil contempt and arrest warrants." The Task Force also eliminated in proposed Rule 92(d) ("hearing") a finding of a "willful" failure to comply with a court order; willfulness is not an element of contempt, but the absence of willfulness is a defense to contempt. Regarding proposed Rule 94

("civil and child support arrest warrants"), the Task Force thought a phrase used in current Rule 94(E)—that requires an arrested person to be brought before a magistrate "within 24 judicial business hours" of the warrant's execution—was unclear; proposed Rule 94(d) changed that to "within 24 hours."

Part XIII: Other Family Law Services and Resources (Rules 95 and 96). A new sentence in Rule 95 ("other family law services and resources") requires the court to determine "on the record whether the parties have the ability to pay for private services as well as allocate the costs of those services." Proposed Rule 95(b) addresses behavioral as well as mental health services. The Task Force proposes to include current section (F) ("batterer intervention and prevention programs") within proposed section (f) ("domestic violence services"). Proposed section (f) adds the word "licensed" when describing service providers.

Part XIV: Family Law Forms (Rule 97). The Task Force did not make any substantive changes to Rule 97 ("family law forms"), but it reorganized the rule and updated a currently inactive hyperlink to the Arizona Judicial Branch website. The Task Force proposes abrogating current Form 6 ("joint alternative dispute resolution statement to the court"), which is rarely used, and to substitute as a new Form 6 the Default Information for Spousal Maintenance Form mentioned in the discussion of Rule 44.1.

Section 6. Specific Substantive Issues. Task Force members held differing views regarding several proposals, so they agreed to specifically note those changes in this petition and request comments. The request covers the following areas:

1. Proposed Rule 27(c), which maintains the current limit requiring service of an order to appear 20 days before a scheduled hearing, but also provides for service "not later than 10 days before the scheduled hearing if the only issue is child support, unless the court orders otherwise;"

2. Whether Rule 29 should allow the filing of a motion to dismiss a motion (the proposed rule does not allow this);

3. Proposed changes to Rule 41(m) and the court's jurisdiction to enter orders when service is made by publication;

4. Proposed Rule 44.1(f), which permits an award of spousal maintenance without the petitioner's personal appearance in court, and the proposed new form on default information for spousal maintenance;

5. Proposed Rule 47, which requires the court to set a temporary orders motion for a resolution management conference, although it may set the matter for an evidentiary hearing when a resolution management conference would not be effective;

6. Proposed Rule 49(b)(2)(B), and requirements for additional or amended disclosures;

7. The manner and consequences of complex case designation under proposed Rule 50;

8. A provision in Rule 67(g) permitting a judge pro tempore to conduct and receive compensation for a private mediation, and to serve as a judge pro tempore in that case without compensation for that official duty (*see* Judicial Ethics Advisory Committee Opinion 98-6, reissued August 6, 1999);

9. Whether the time for conducting a resolution management conference under proposed Rule 76(a)—60 days after a party files a request—is too long an interval; and

10. Proposed Rule 91(j)'s provision that an applicant must make good faith efforts to promptly complete service of an order to appear, and other requirements for the time to complete service of the order.

Section 7. Conforming Amendments to ARCAP 9. The Task Force also proposes conforming amendments to Family Rules references currently found in Rules 9(e) and 9(f) of the Arizona Rules of Civil Appellate Procedure. The proposed amendments to Family Rules 81 and 83 would result in incorrect references in ARCAP 9 to Rule 81, which would be reserved, and to certain renumbered sections of Rule 83. Additionally, under Rule 9(e)(1)(E), a Rule 85 motion filed within 25 days after entry of judgment would extend the time for filing a notice of appeal. Proposed changes to ARCAP 9 are shown in Appendix B.

Section 8: Rule Comments. The proposed amendments delete comments in the existing rules that are no longer accurate or have otherwise outlived their usefulness. Also, when an existing comment includes a substantive requirement, the Task Force attempted to include the requirement in the body of the rule. The proposed rules retain some comments that continue to provide essential information. It added new comments and revised others when necessary to provide

courts and practitioners with essential background, references to relevant statutes, and suggestions about how a rule should operate in practice.

The proposed rules also add a "prefatory comment." A similar comment was included in the 2012 amendments to the Arizona Rules of Evidence, the 2015 amendments to the Arizona Rules of Civil Appellate Procedure, the 2017 amendments to the Arizona Rules of Civil Procedure, and the 2018 amendments to the Arizona Rules of Criminal Procedure. The proposed prefatory comment to the family rules identifies significant reasons for these revisions; describes the two general types of changes (stylistic and substantive), and gives examples of substantive changes; provides direction on the use of existing case law; and provides guidance for using comments contained in earlier versions of the rules.

Section 9: Preliminary Stakeholder Comments. On January 11, 2018, the Task Force distributed a link to a preliminary draft of the proposed family rules, version date 01.04.2018, along with a message from the Chair requesting comments, to representatives of the following entities:

State Bar of Arizona
American Academy of Matrimonial Lawyers, Arizona Chapter
Morrison Institute
Association of Family and Conciliation Courts, Arizona Chapter
Arizona Attorney General
State Bar of Arizona, Family Law Section
State Bar of Arizona, Family Law Practice and Procedure Committee
Committee on Superior Court
Committee on the Impact of Domestic Violence and the Courts
Arizona Commission on Access to Justice

Presiding Superior Court Judges
Superior Court Administrators
Superior Court Clerks
William E. Morris Institute for Justice
Community Legal Services
DNA People's Legal Services
Southern Arizona Legal Aid
Maricopa County Bar Association
Maricopa County Bar Association, Paralegal Division
Pima County Bar Association
Arizona Court Reporters Association

The January 16 and January 30, 2018 editions of the State Bar of Arizona's *eLegal* newsletter to its members also included a message from the Chair, a link to the draft family rules, and a request for comments. A link to the 01.04.2018 version of the draft rules was posted on the Task Force webpage on the Arizona Judicial Branch website. Adjacent to the rules, the Task Force posted a link to an Outlook mailbox, which provided an easy mechanism for submission of comments to the Task Force. The Task Force received more than a dozen thoughtful comments, some of them raising multiple issues, which the Task Force considered at a meeting on February 16, 2018. In late January, the Task Force requested, and an Arizona member of the Uniform Law Commission provided, comments on proposed Rules 67.1 and 67.2.

Section 10: Modified Schedule. As noted in Section 1, the Court entered an Order on November 30, 2017 extending the filing date of this petition until March 31, 2018. That Order also provided the following modified schedule:

June 1, 2018: Petition open for comments until this date.

July 6, 2018: Petitioner's reply is due.

Section 11: Conclusion. The Task Force requests the Court to take the following actions:

(1) abrogate the current family rules;

(2) adopt the proposed new set of family rules shown in Appendix A, subject to any modifications proposed by the Task Force's reply, effective January 1, 2019; and

(3) adopt the conforming amendments to ARCAP 9 shown in Appendix B.

RESPECTFULLY SUBMITTED this 22nd day of March 2018.

By /s/ Rebecca White Berch
Justice Rebecca White Berch (ret.), Chair

By /s/ Mark Armstrong
Judge Mark Armstrong (ret.), Co-Chair