

Hon. Patti Noland, President
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IN THE ARIZONA SUPREME COURT

In the matter of)	R- 07-0010
)	
PETITION TO AMEND THE)	COMMENT TO PROPOSED RULES
ARIZONA RULES OF FAMILY)	RELATED TO AMENDING ARIZONA
LAW PROCEDURE)	RULES OF FAMILY LAW PROCEDURE
_____)	RULES 41(G) AND 44(B)(4)

The Arizona Association of Superior Court Clerks (AASCC) submits the following comment on the petition to amend the Arizona Rules of Family Law Procedure as they pertain to the service of summons on the state and the process for informing defaulting parties of a decree or judgment:

Rule 41(G) *Service of Summons upon the State*. The AASCC favors having electronic service language in the proposed rule; however, the Clerks of Superior Court currently do not have the technology in place to effectuate the proposed electronic service on the state in Title IV-D cases. Because implementation of electronic service on the state in these cases requires an Administrative Order from each county's presiding judge, the Clerks favor leaving the language in the proposed rule change so that electronic service can be implemented when the technology allows. The alternative, removing the language from the proposed rule now and adding it back at a later date, would be more cumbersome.

Rule 44(B)(4) *Informing Defaulted Party*. The AASCC recommends rewording the proposed rule, using Pinal County Local Rule 3.6 as a model, because, as written, the proposed rule would weaken the veracity of the court record.

The proposed rule would require the party mailing a copy of the decree or judgment to the other party within 24 hours of receipt and requires entering information on a court order that has already been entered into the court record; that is, the mailing party would have to place a record of the mailing on the *entered* decree or judgment, which would require altering the filed-in court document. This extra notice of mailing is particularly burdensome on those clerk's offices where the electronic image of a document is the original or where the decree or judgment is electronically filed and there is no paper upon which to write the notices of mailing after the decree or judgment has been entered.

Because the proposed rule requires altering a court document, the AASCC recommends a version of proposed Rule 44(B)(4) modeled after the process in Pinal County Local Rule 3.6, which puts the burden of service on the prevailing party. Before or after service, the party may file a certificate of service for inclusion with the court record, which eliminates the need to alter the entered decree or judgment. The AASCC also recognizes that the Clerk of the Superior Court in Maricopa County intends to file a separate comment, indicating that any version of proposed Rule 44(B)(4) will negatively impact the work processes in place in that county.

Note that recommendations for new text in the appendix below are indicated by ALL CAPS.

DATED this 16th day of May, 2008.

/s/ Patti Noland
Hon. Patti Noland, President
Arizona Association of Superior Court Clerks

A copy of this comment has been mailed or delivered this 16th day of May, 2008, to:

Hon. Norman J. Davis, Chair
Family Law Rules Review Committee
Maricopa County Superior Court
125 W. Washington, Suite 002
Phoenix, AZ 85003
Telephone: (602) 506-5262
Facsimile: (602) 506-7867
Via electronic filing of comment

Supreme Court R- 07-0010

APPENDIX A

ARIZONA RULES OF FAMILY LAW PROCEDURE

* * *

V. DEFAULT DECREE, CONSENT DECREE, AND DISMISSAL

Rule 44. Default Decree

A. [NO CHANGE IN TEXT]

B. Judgment by Default.

1-3. [NO CHANGE IN TEXT]

Text of rule effective January 1, 2009

Effective January 1, 2009 for counties with a population of fewer than 2 million

4. *Informing Defaulted Party.* WHEN A DECREE OR JUDGMENT IS ENTERED BY DEFAULT, EXCEPT IN THOSE CASES RESULTING IN DEFAULT AFTER SERVICE BY PUBLICATION, THE PARTY OBTAINING THE DECREE OR JUDGMENT SHALL CERTIFY, THAT, WITHIN 24 HOURS OF THE PARTY'S RECEIPT OF THE DECREE OR JUDGMENT, THAT PARTY WILL MAIL A COPY OF THE DECREE OR JUDGMENT TO THE PARTY IN DEFAULT AT THAT PARTY'S LAST KNOWN ADDRESS. FAILURE TO COMPLY WITH THIS RULE SHALL NOT AFFECT THE VALIDITY OF THE DECREE OR JUDGMENT ENTERED OR THE TIME TO APPEAL, OR RELIEVE A PARTY FROM ANY OBLIGATIONS SET FORTH IN THE DECREE OR JUDGMENT.