

Family Court Improvement Committee  
Judge Paul McMurdie, Chair  
c/o Susan Pickard, Staff  
1501 W. Washington St., Ste. 410  
Phoenix, Arizona 85007

**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

In the Matter of:	)	Supreme Court
	)	No. R-21-0019
PETITION TO AMEND RULE	)	
76.1(b)(2) and (c) OF THE	)	COMMENT OF THE FAMILY
ARIZONA RULES OF FAMILY	)	COURT IMPROVEMENT
LAW PROCEDURE	)	COMMITTEE

**BACKGROUND**

The Family Court Improvement Committee (FCIC) respectfully submits this Comment in opposition to Petition R-21-0019 filed by the State Bar.

In its Petition, the State Bar identifies a perceived problem that Family Rule 76.1(b) does not set forth the process that parties and counsel must take in preparing a joint pretrial statement. Rule 76.1(b)(2) and (c) provides as follows:

**(b) Timing.** Unless the court orders otherwise, the parties must file:

...  
(2) a pretrial statement 20 days before a trial.

**(c) Joint and Separate Statements.** Unless the court orders otherwise, the parties may file joint or separate statements. The party who initiated the action set for hearing must take the lead to prepare a draft joint statement and must communicate with every other party concerning the statement. Every statement must be signed by each party or counsel. However, if the parties are self-represented and there is a history of domestic violence, the parties must file separate statements

Family Rule 76.1(b)(2)-(c). Rule 76.1 was revised effective January 1, 2019, based upon the work of the Task Force on the Arizona Rules of Family Law Procedure. R-17-0054. That Task Force included a cross-section of current and former judicial officers with family law experience, attorneys, and a wide cross-section of related administrators and court staff.

The State Bar's proposal would reduce the deadline for pretrial statements to 5 business days before trial, require both parties to file a "Notice of Issues" at least 20 calendar days before trial, set a deadline of 15 calendar days before trial for the initiating party to provide an "outline for the pretrial statement" to the opposing party, and set a deadline of 8 business days before the hearing for the responding party to provide its "portion" to the initiating party. The State Bar argues that its solution would provide more time for settlement as well as additional direction to self-represented litigants in how to comply with Rule 76.1.

The FCIC opposes this Petition based primarily upon historical issues with joint pretrial statements. The 2019 revisions to the Family Rules specifically allowed for joint *or* separate pretrial statements. A significant percentage of cases involve self-represented litigants for whom compliance with various rules is low and the ability to create jointly-created necessary pleadings is challenged. In Pima and Maricopa counties, over 70% and up to approximately 80% of pre-decree cases involve at least one self-represented litigant. The State Bar's proposed rule deemphasizes the option to file separate pretrial statements. Furthermore, it would add layers of additional responsibilities to a process for which there is marginal compliance.

The State Bar asserts that “family law practitioners have reported that courts are typically ordering parties to submit these statements five (5) days before the trial date.” Petition, p. 1. While that may be the case in some counties, in Pima County, the Family Court generally triggers pretrial statements to be filed before the mandatory domestic relations settlement conference, not the trial date. That settlement conference is often set well before the trial date.

As to the specifics of the proposed rule, the FCIC has the following additional concerns:

- The proposed Notice of Issues appears to be a slimmed down version of a Resolution Statement (RS) required in all pre-decree cases. *See* Family Rule 49(c). The proposed rule does not define what must be included in the Notice of Issues; whereas, Rules 49(c) and 76(b)(1)(B) requires parties to include specific and detailed positions on all disputed issues. The lack of specificity regarding what should be included in the Notice of Issues, absent the creation of yet another form, will create more confusion and litigation, rather than less. If parties complied with current Rule 49(c), parties and counsel would have more time to resolve issues at less expense, than under the proposed rule.
- The proposed rule uses both calendar and business days. FCIC believes that using both in the same subpart of the rule is more likely to confuse self-represented litigants, rather than assist them in navigating the court process. Furthermore, the mixture of calendar and business days under the proposed rule could result in a responding party having as few as 2 working days to provide

their portion. Preparation of a pretrial statement in a complex case can be expensive and time consuming, especially as it relates to objections to witnesses and exhibits (Family Rule 76.1(f)(12)-(13)). It would also give the initiating party only 3 working days to review the responding party's portion of the pretrial statement.

- The proposed rule requires to the initiating party to provide “their outline for the pretrial statement” while the other party must provide “their portion.” Again, unfortunately, FCIC could see gamesmanship involved under the proposed rule as written where the initiating party only provides the “outline” rather than complete “portion” of the pretrial statement.

In light of these concerns, the FCIC respectfully requests that the Court refer the issue to the FCIC for further review of the underlying issues relating to the filing of pretrial statements.