

Honorable Kyle A. Bryson
Pima County Presiding Judge
Superior Court of Arizona in Pima County
110 W. Congress
Tucson, AZ 85701
(520) 724-4215

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

PETITION TO ADOPT AMENDED LOCAL
RULES OF PRACTICE

Supreme Court No. R-17-0051

REPLY OF PIMA COUNTY
SUPERIOR COURT

Pursuant to Rule 28.1, Arizona Rules of the Supreme Court, the Presiding Judge of the Superior Court of Arizona in Pima County submits this reply in support of its Petition asking this Court to adopt amended Local Rules of Practice for Pima County. The only comments submitted to the Supreme Court were from the Pima County Bar Association Family Law Committee ("Committee"). Any changes proposed or agreed to below do not represent substantive changes to the proposed rules.

Rule 1 – General Administration

The Committee first points out that while Rules 1.8 and 1.9 of the general administration rules refer to the steps counsel should take in certain situations, the rules do not mention self-represented litigants. While the court does not believe a change in the language is necessary, this could be easily remedied by adding either a section that states that any reference to "counsel" in the general rules can include self-represented litigants, or such language could be added to each rule. The language in these rules as amended is essentially the same as the current rules. We propose, if directed, to include language in the rules referring to self-represented litigants, that we add paragraph 1.3, which would state: "When a rule refers to 'counsel' or 'attorney,' such reference includes self-representing litigants."

The Committee also notes that the requirements in Rule 1.11 regarding the delivery of a copy of documents to the assigned division would cause a hardship to self-represented litigants. The delivery of copies is a requirement in the current rules and has not created any issues. The court does not believe a change needs to be made.

The committee notes that Rule 1.17 does not include an exception to the consultation rule for cases involving orders of protection or domestic violence. This requirement is consistent with the requirements in the Arizona Rules of Civil Procedure. However, language could be added that the consultation is required "unless otherwise ordered by the court for good cause shown," in order to deal with special situations.

Rule 3 – Family Law

The committee first comments that Rule 3.4(a) requires too long of a time frame for filing a request for a telephonic appearance. The court does not believe that the 30-day requirement is too long.

The committee notes that Rule 3.4(C) should refer to the new rules 67.1 and 67.2 of the Arizona Rules of Family Law Procedure. Since those rules are effective January 1, 2018, they should be added to the language of this rule, and the court will make that change.

The committee requests additional emphasis on Rules 3.5(A), 3.5(A)(3)(a), and 3.5(A)(3)(b) that certain documents should be provided to the other party but not filed with the court. The court believes that self-represented litigants can interpret the rules as written and determine which documents are to be filed and which are to be provided in disclosure.

The committee again points out that self-represented litigants might have difficulty meeting the disclosure requirements in Rule 3.5(C). The rule itself does not have time requirements; the time requirements are in rule 3.5(B). The court does not believe that these requirements are too onerous for self-represented litigants.

The committee points out that Rule 3.5(E) does not require the filing party to provide the other party with a copy of Rule 3.5, as Rule 3.5(C) does. This language could be added to the rule, although the prior version of the rule did not include it. The court deems the proposed change unnecessary.

The committee comments that it believes the sanctions in Rule 3.7(F) for failing to comply with the rule are unnecessarily harsh. These sanctions are essentially the same as in the current version of the rule, and the court believes they are fair. No change is necessary.

The committee comments that Rule 3.6(B) should reflect that the consolidation of a juvenile court case and the family law case is not mandatory. The practice in Pima County has historically been that family cases have been consolidated into dependency cases post-adjudication. Pre-adjudication, consolidation has been, and continues to be, optional. The proposed language of this rule will perpetuate and formalize this practice. The Juvenile Court has procedures for dealing with confidential information in any minute entries issued in consolidated cases. No change is required.

The committee comments that Rule 3.7(A) refers to a "bifurcated" trial. This language was in the original rule. The committee also notes that there is no provision for an exception to requiring a joint pretrial conference in cases involving an order of protection or domestic violence. This language is again the same as in our current rules; however, an addition could be made providing for court discretion to waive the requirement for good cause shown. While the court does not believe the change is necessary, it would make the addition if so directed.

The committee suggests adding the language "that addresses the issues pending" to the end of Rule 3.7(C)(4). The court does not believe the additional language is necessary.

The committee suggests that Rule 3.8 raises the issue of notice to the responding party. However, this rule is essentially the same as the current version of the rule. A sentence could be added indicating a Respondent's name cannot be changed unless the appearance fee is paid, waived or deferred, but it is not deemed necessary.

The committee again notes that Rule 3.9(B) does not make an exception to the disclosure requirement in the case of a protected address. Language could be added that the disclosure is required "unless otherwise ordered by the court."

Regarding Rule 3.10, the committee correctly notes that the rule should be updated to include the new Rules of Arizona Family Law Procedure, 67.1 and 67.2, which were effective on January 1, 2018. The issue they raise regarding the use of private mediation instead of court mediation is addressed in the last sentence of 3.10(A). The committee further suggests that 3.10(B)(1)(c) should be amended to state that a party may not file a Motion to Set or a Controverting Certificate if mediation has not been attended. The court is concerned that such a rule could be used as a delay tactic by the parties. The current rule does not require attendance to mediation before a trial can be set; mediation must be complete before the trial commences. No change is necessary.

The committee comments that 3.10(B)(2) is inconsistent with 3.10(A) in that it fails to mention the parenting education requirement. The rule is not inconsistent, and Rule 3.9 is clear that all parents must attend the parenting education class.

The committee suggests that the two different procedures in 3.10(D) for represented parties versus unrepresented parties is unfair. Represented parties have additional time to confer with their attorneys after an agreement is reached. The procedure is different because represented parties have the right to consult with their attorneys afterward. All parties can object to any modification by the court, regardless of whether they are represented by an attorney or are representing themselves, and the Court is not required to approve an agreement, regardless of whether the parties are represented. The committee also suggest that it may be difficult for self-represented litigants to have documents timely delivered. The court does not believe this to be an issue, and that no change is necessary.

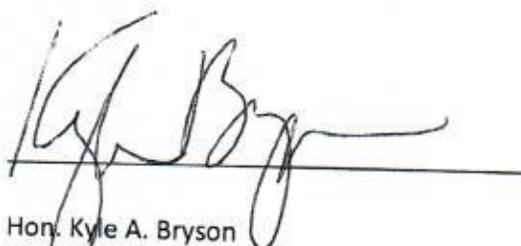
Rule 6 – Juvenile Court

The committee comments that Rule 6.2(B) states that the Court “shall” consolidate the family law matters with the juvenile court case. The practice in Pima County has historically been that family cases have been consolidated into dependency cases post-adjudication. Pre-adjudication, consolidation has been, and continues to be, optional. The proposed language of this rule will perpetuate and formalize this practice. The court does note that to be consistent with the restyling of these rules, “shall” could be changed to “will,” but does not believe such a change is necessary.

Conclusion

For the reasons stated herein and in the Petition, the Court respectfully requests the Court grant the Petition.

Respectfully submitted this 29th day of January, 2018.

A handwritten signature in black ink, appearing to read 'Kyle Bryson', is written over a horizontal line. The signature is fluid and cursive.

Hon. Kyle A. Bryson
Presiding Judge
Pima County Superior Court

Original mailed this
29th day of January, 2018 to:
Clerk of the Arizona Supreme Court
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Phoenix, AZ 85007