

1 Hon. Greg Sakall  
2 Pima County Superior Court  
3 110 W. Congress St.  
4 Tucson, AZ 85701  
5 (520) 724-8301

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

8 In the Matter of:

Supreme Court No. R-17-0054

9 **PETITION TO AMEND RULES OF**  
10 **FAMILY LAW PROCEDURE AND**  
11 **ARCAP 9**

**COMMENT TO PROPOSED**  
**FAMILY COURT RULES**

12  
13 Pursuant to Rule 28(D) of the Arizona Rules of Supreme Court, the Family  
14 Law Bench of the Superior Court of Arizona, Pima County, submits the following  
15 comments to the Petition of the Task Force on the Arizona Rules of Family Law  
16 Procedure (“Task Force”) to amend the Arizona Rules of Family Law Procedure  
17 (“family law rules”) and related rules.  
18  
19

20 With only a handful of exceptions, the members of Pima County’s Family  
21 Law Bench support the Petition of the Task Force on the Arizona Rules of Family  
22 Law Procedure (“Task Force”) to amend the Arizona Rules of Family Law  
23 Procedure (“family law rules”) and related rules.  
24

25 These comments are a compilation of comments by individual members of

1 the family law bench, and they are not comments of the entire Family Law Bench or  
2 the Pima County Superior Court. Following are brief summaries of the proposed  
3 revisions:  
4

5 Rule 7(d)(3)(A): There appears to be some language missing.

6 Rule 13(c): Noting that requests to close the courtroom sometimes  
7 happen during a hearing based on information that may not  
8 have been known in advance, the suggestion is that this  
9 provision be revised such that “a *written* motion under this  
10 rule” must be filed not later than two days before the  
11 hearing or proceeding.  
12

13 Rule 23(b): Suggestion is to rewrite this proposed rule part as follows:  
14

15 (b) Notice of Filing Foreign Judgments

16 (1) A party may register a legal decision making and/or  
17 parenting time order from another state under A.R.S. § 25-  
18 1051 et seq. The party may then file a petition as  
19 referenced in (a)(8) above.

20 (2) A party may register a support order from another state  
21 under A.R.S. §§ 25- 1301 et seq. The party may then file  
22 a petition as referenced in (a)(9) above.

23 (3) A party may file a decree concerning disposition of  
24 property or spousal maintenance from another state under  
25

1 A.R.S. §§ 12-1701 et seq. The party may then file a  
2 petition as referenced in (a)(10) above specifying the relief  
3 sought.  
4

5 Rule 23(d): Suggestion is to delete or move the provision. The statutes  
6 require a petition to be filed, and by themselves, such  
7 motions do not initiate a case.  
8

9 Rule 25(c): Was it intentional to remove the requirement of a  
10 summons as to a Petition to Establish Legal Decision-  
11 Making and Parenting Time?  
12

13 Rule 25(f): Suggestion is to consolidate this provision with Rule 25(d)  
14 and renumber the remaining subparts accordingly.  
15

16 Rule 27(c): Suggestion to modify title to read “Petition to Establish  
17 Legal Decision-Making....” Also, insert “summons” after  
18 “petition” in the next to last line.  
19

20 Rule 27(d): Delete “and (b)” and insert “through (c).”  
21

22 Rule 28(a): Change proposed Rule 28(a)(1)(C) to Rule 28(a)(2) with  
23 title “Amending by Leave of Court.” Also, move the last  
24 sentence of proposed Rule 28(a)(3) to its own subpart with  
25 title “Response to Amended Pleading.” Renumber

1 remaining part of rule accordingly.

2 Rule 29(a)(1)(A)(i): Replace “complaint” with “petition”. Suggestion to  
3 include “order to appear” along with “summons.”  
4

5 Rule 29(b): In second sentence, replace “But” with “However.”

6 Rule 29(a)(1)(A): Reword (ii) and new (iii) as follows for clarity:

7 (ii) Within 60 days after the request for waiver was sent if the  
8 respondent or responding third-party has timely waived  
9 service under Rule 40(f) with the respondent or  
10 responding third-party is within any judicial district of the  
11 United States  
12

13 (iii) Within 90 days if after the request for waiver was sent if  
14 the respondent or responding third-party has timely  
15 waived service under Rule 40(f) with the respondent or  
16 responding third-party is outside any judicial district of the  
17 United States  
18  
19

20 Rule 29(c): There is a conflict between proposed Rule 29(c) and  
21 29(g)(2) as Rule 29(c) seems to limit when a motion for  
22 failure to state a claim to only before the responsive  
23 pleading is filed, and (g)(2) provides that it may be raised  
24 at trial. Reorganize and reword as follows:  
25

1 (c) Time to Assert Certain Defenses; Waiver of Certain  
2 Defenses

3 (1) Lack of subject matter jurisdiction under subpart  
4 (b)(1) may be made at any time.

5 (2) The defenses listed in subpart (b)(2) through (5) must  
6 be made before filing or within a responsive pleading. A  
7 party waives these defenses by failing to timely:

8 (a) Make a motion under this rule; or

9 (b) Include it in a responsive pleading or an amendment to  
10 a pleading.

11 (3) Failure to state a claim upon which relief can be  
12 granted under subpart (b)(6), to join a person required by  
13 Rule 33(c), or to state a legal defense to a claim may be  
14 raised at any time prior to or at trial.

15  
16 Rule 29(g): Delete as language moved up to (c).

17 Rule 29(h): Change title to insert “Defenses and ...”

18 Rule 35: It is suggested that the duty to consult found in proposed  
19 Rule 34(c) also be included in Rule 35.

20  
21 Rule 35.1: Regarding motions for reconsideration, the suggestion is  
22 that similar to Rule 7.1(e), Ariz. R. Civ. P., provide that  
23 the court may order oral argument if it so desires.

24  
25 Rule 39(a): There are some stray dashes.

1 Rule 41(m): Adopt the State Bar’s comment to this proposed rule.

2 Rule 70(a): With regards to notices of settlement, the current rule only  
3 requires notice to the assigned judge/commissioner. With  
4 the proposed new rule requiring notice to three different  
5 entities at the court, there is a concern that the proposed  
6 rule is unnecessarily burdensome, especially given the  
7 difficulties of self-represented litigants navigating the  
8 system.  
9

10  
11 Rule 72(b)-(j): In terms of a family law master, the suggestion is to  
12 replace the term “order of reference” with “order of  
13 appointment.”  
14

15 Rule 72(b)(2)(E): Change “taxable cost” to “taxable costs” to be consistent  
16 with the prior reference to “allocated costs”  
17

18 Rule 72(e): In terms of the master circulating a draft before filing a  
19 report, was it intended to omit “Or the parties themselves  
20 if self-represented”?

21 Rule 72(j): Apparently awkward phrasing of “undertaken under.”  
22 Suggestion to use phrasing “undertaken pursuant to.”  
23

24 Rule 72.1(b)-(e): In terms of a professional with special expertise, the  
25 suggestion is to replace the term “order of reference” with

1 “order of appointment.”

2 Rule 73(a)(1): The prior version of the rule defined “support” as also  
3 including spousal maintenance for the purpose of this rule.  
4 Was this an intentional omission? Suggestion to be  
5 consistent with Rule 73(b), insert the term “spousal  
6 maintenance” after “child support,” and also “attorney  
7 fees” in Rule 73(a)(1).  
8

9  
10 Rule 74(l): Apparently awkward phrasing of “undertaken under.”  
11 Suggestion to use phrasing “undertaken pursuant to.”

12 Rule 76(a): Support for the State Bar’s comment to this proposed rule  
13 suggesting a deletion of the requirement that the court set  
14 an RMC.  
15

16 Rule 83(b): Recommend revising the proposed rule to read as follows:  
17 The court may on its own or, on motion, vacate the  
18 judgment if one has been entered, take additional  
19 testimony, amend findings of fact and conclusions of law  
20 or make new ones, and direct the entry of a new  
21 judgment. The relief granted must be limited to the  
22 grounds justifying relief under this rule.  
23

24 Rule 83(c)(2): In light of busy family law calendar, there is a suggestion  
25

1 to expand the time for the court to act on the motion to 30  
2 days, rather than 15 days, and to revise the proposal rule  
3 as follows:  
4

5 Within 30 days or a reasonable time of the filing of a  
6 motion pursuant to this Rule, the court must either  
7 summarily deny the motion or provide the non-moving  
8 party an opportunity to file a response. The court may limit  
9 the scope of a response to specified issues. The court may  
10 not grant a motion without providing the nonmoving party  
11 an opportunity to file a response. The response deadline  
12 will be 30 days after the entry of an order allowing a  
13 response.  
14  
15

16 Rule 83(e): Modify the title to read “Motion by the defaulted party  
17 after Service by Publication”  
18

19 Rule 85(A): Recommend to rephrase the third sentence to read: “After  
20 an appeal has been filed and is pending in an appellate  
21 court ...”  
22

23 Rule 91: Support for the restructuring of Rule 91 into discrete rules.  
24

## 24 CONCLUSION

25 Members of the Pima County Family Law Bench respectfully requests that

1 the Petition be granted with the proposed revisions described above.

2  
3 /s/ Greg Sakall

4  
5 Hon. Greg Sakall  
6 Superior Court of Arizona, Pima  
7 County

8  
9 Electronic copy filed with the  
10 Clerk of the Supreme Court of Arizona  
11 this 1st day of June, 2018.

12 by: /s G. Sakall  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25