

TO:

Rule 28 Distribution
Paul J McMurdie

ATTACHMENT

NEW RULES 45.1 and 78.1 RULES OF FAMILY LAW PROCEDURE

Rule 45.1. Summary Consent Decree

(a) Generally. If the parties reach a comprehensive settlement on all issues before either party has petitioned for dissolution of marriage or legal separation, they may file a summary consent petition and response and pay the appropriate fees. This rule does not apply to petitions in paternity, maternity, or third-party matters.

(b) Summary Consent Petition and Response. The summary consent petition and response must be a single document captioned as “Summary Consent Petition and Response” and include:

(1) the birth date, occupation, and address of each party and the length of each party’s domicile in Arizona;

(2) the date of the parties’ marriage, where it was performed, and whether it is a covenant marriage;

(3) the names, birth dates, and addresses of all living children (natural or adopted) common to the parties and whether a party is pregnant;

(4) a statement of the grounds for the court’s jurisdiction;

(5) a statement that formal service of process is waived;

(6) a statement, in the case of marriage dissolution, that the marriage is irretrievably broken, or, in the case of legal separation, that the marriage is irretrievably broken or that both parties desire to live separate and apart;

(7) a statement that the parties have resolved all issues about their dissolution or separation;

(8) a request that the court enter a decree of dissolution or legal separation and a statement of the relief the parties jointly seek; and

(9) both parties’ signatures.

(c) Preliminary Injunction. Notwithstanding the requirements of Rule 25(a), when filing a summary consent petition and response, the parties must present two copies of a preliminary injunction to the clerk to issue under A.R.S. § 25-315(A). The clerk will issue the injunctions and return copies to the parties.

(d) Entry of a Summary Consent Decree.

(1) *Agreements and Proposed Decree.* Upon filing the summary consent petition and response, or at any time no later than 60 days after the filing date, the parties must

submit to the court all required final settlement documents, including their written agreements and the proposed decree.

(2) *Content of the Proposed Decree.* The proposed decree's content must meet the requirements of Rule 45(b). If children are involved, the proposed decree's content must also meet the requirements of Rule 45(c).

(3) *Waiting Period; Hearing.* The court may not enter a final summary consent decree earlier than 60 days after the filing date of the summary consent petition and response. After 60 days, the court may enter a summary consent decree without a hearing if it has determined that the parties have met the requirements for a summary consent decree. Alternatively, the court may set a hearing on specified issues or enter other appropriate orders.

(4) *Notice of Intent to Withdraw.* Before the summary consent decree is entered, either party may request to withdraw from the agreement. If the court allows a party to withdraw, the case will continue as a dissolution or separation proceeding upon paying the additional required fees and filing the appropriate pleadings under Rule 23. The court must dismiss the case if the parties jointly withdraw from the summary consent decree agreement.

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Rule 78.1. Stipulated Order Terminating a Decree of Legal Separation

(a) **Generally.** If a legal separation decree has not been converted into a decree of dissolution, then at any time after the decree's entry, the parties may stipulate that the court may enter an order terminating the legal separation decree.

(b) **Case Number.** The stipulation, order, and related documents must be filed under the same case number as the legal separation action.

(c) **Stipulation.** The parties' stipulation must meet the requirements of Rule 69, and each party must personally sign the stipulation. The stipulation must include the following terms:

(1) Both parties agree to terminate the legal separation, that they desire to restore their status to legally married, and that they do so intelligently, voluntarily, and without duress, coercion, or undue influence.

(2) The parties acknowledge that on entry of the stipulated order terminating the decree of legal separation, the marital community will be reformed as if the parties married on the date of the termination order, and the legal separation no longer exists.

(3) The parties acknowledge that any property or debt awarded to either party as separate property or debt under the legal separation decree remains separate. The parties also acknowledge that any property acquired or debts incurred from the entry of the legal

separation decree through the termination date remains the separate property of the acquiring party and the separate debt of the incurring party.

(4) The parties acknowledge that any property payments due from one party to the other under the legal separation decree are waived unless otherwise specified in the termination order.

(5) The parties acknowledge that any parenting orders entered in the legal separation decree under Chapter 4 of Title 25 of the Arizona Revised Statutes no longer apply.

(6) The parties acknowledge that any provisions for child support or spousal maintenance entered in the legal separation decree no longer apply, except for any sum owed to the State under A.R.S. § 46-407. Also, unless otherwise agreed, each party waives any claim for amounts that remain due while the support provisions under the legal separation decree were in effect.

(7) The parties acknowledge that the termination order does not impact the rights of creditors that may have relied on the terms of the legal separation decree.

(d) Order. A proposed order must accompany the stipulation. The order must incorporate the terms of the parties' stipulation. The court must file the order after a judicial officer approves and signs it.