

**Task Force on the Arizona Rules of Family Law Procedure**

**State Courts Building, Phoenix**

**Meeting Minutes: February 17, 2017**

**Members attending:** Hon. Rebecca Berch (Chair), Hon. Mark Armstrong (Co-Chair), Michael Aaron, Hon. John Assini, Keith Berkshire, Mary Boyte Henderson, Annette Burns, Hon. Dean Christoffel, Cheri Clark, Hon. Suzanne Cohen, Helen Davis (by telephone), Kiilu Davis, Hon. Karl Eppich, Joi Hollis, Hon. Paul McMurdie, Aaron Nash, Jeffery Pollitt (by telephone), Janet Sell, Steven Serrano, Hon. Peter Swann, Steven Wolfson, Gregg Woodnick [all members present]

**Guests:** Martin Lynch, Patricia Cummins, Cynthia Oxman, Aaron Blase, David Alger

**Administrative Office of the Courts ("AOC") Staff:** John W. Rogers, Mark Meltzer, Karla Williams, Sabrina Nash, Julie Graber, Theresa Barrett, Chris Manes, Alex Fernandez de Jauregui, Amy Love

**1. Call to order; introductory remarks.** The Chair called the first Task Force meeting to order at 10:00 a.m. She welcomed the members and introduced the Co-Chair, Judge Armstrong. Judge Armstrong noted that he had chaired the Committee on Rules of Procedure in Domestic Relations Cases (Administrative Order Number 2003-63) from 2003 to 2005. Those rules, which became effective in 2006, have been utilized for a full decade, and the Court determined that 2017 was an appropriate time to review and restyle those rules.

The Chair advised that staff will audio-record Task Force meetings; these recordings will be deleted as provided by Administrative Order Number 2010-114. A member of the public requested to video-record today's meeting, which the Chair will allow as long as it does not interfere with the conduct of the meeting, and subject to any objections from those present. The Chair noted that the Task Force has a webpage on the Arizona Judicial Branch website; this page will allow Task Force members and the public to review meeting materials before each Task Force meeting. The Chair then proceeded to introduce herself and her Co-Chair, followed by introductions of Task Force members and staff.

**2. Review of Administrative Order Number 2016-131; approval of rules for conducting business.** The Chairs reviewed Administrative Order Number 2016-131 ("the A.O."), which established this Task Force. The A.O. directs the Task Force to "identify possible changes to conform to modern usage and to clarify and simplify language" of the Family Law Rules ("FLR"). The primary objective of the Task Force therefore is restyling the FLR. There have been a series of rule restyling projects in

Arizona, beginning with the Evidence Rules during the strategic agenda of then-Chief Justice Berch. During the current strategic agenda, the Court has overseen the restyling of other procedural rules. These include rules for Protective Orders and Civil Appeals, and more recently, the Civil Rules, which became effective on January 1, 2017, and the Criminal Rules, for which there is a pending rule change petition. Because the civil rules were the source of a number of FLR, the FLR Task Force should review the newly restyled civil rules and consider conforming changes. Justice Berch noted that the A.O. has a goal that this Task Force file a petition with its proposed rule changes in January 2018. The members' terms extend to December 2018, which will allow them to review comments to that rule petition during 2018.

The Chair then asked members to review proposed rules for conducting Task Force business, which were included in the meeting materials. Those rules include a proxy policy and provisions for a "call to the public."

**Motion:** A member moved to approve the proposed rules for conducting business. Another member made a second to the motion, and the motion passed unanimously. **FLR: 001**

**3. Restyling conventions.** The Chair then invited John Rogers, a Supreme Court staff attorney, to discuss rule restyling principles and his recommended conventions for restyling the FLR. Mr. Rogers began his presentation by exhibiting the 1977 volume of the Arizona Rules of Court. The 1977 volume was less than 1000 pages in length, and was printed in a single column of large font. He compared that to the 2017 volume, which is twice as long and has double columns of smaller font. He noted that the 2017 volume presents a tremendous amount of material for users to absorb, and there is considerable need for rules that are more user-friendly and that are easier to locate and comprehend. Mr. Rogers proceeded to trace the modern history of federal rules restyling and to discuss rules restyling conventions prepared by Bryan Garner. (Mr. Garner's *Guidelines for Drafting and Editing Court Rules* were included in the meeting materials.) Mr. Rogers prepared "Style Conventions" that he drafted for the civil rules restyling project, and the Civil and Criminal Rules Task Forces adhered to these conventions. The "Style Conventions" and another document Mr. Rogers prepared, "Rule Restyling: Key Principles and Examples," were also in the meeting materials. The latter document had specific examples for restyling the FLR. The following are among Mr. Rogers' conventions and suggestions:

Improved formatting and organization will help users more easily find what they want. Make generous use of subparts and subheadings, and make lists when a rule calls for multiple items or factors. Mr. Rogers noted the current version of Rule 64(a), which consists of a long unbroken block of text, and demonstrated how reorganization alone can improve the rule's clarity.

Avoid run-on sentences. Mr. Rogers cited current Rule 44(B)(3) as an example; the rule has two sentences consisting of 195 words.

Avoid archaic terms such as “thereto” or “hereinafter.”

Good restyling uses simpler words and proper word choice. Use “before” rather than “prior to.” Say the court “orders” rather than “directs.” The court also “enters” or “files” its orders rather than “issues” them.

Avoid redundant terms, such as the often-found phrase, “the court in its discretion may....” “May” means the court has discretion.

Minimize “of” and “by” phrases. For example, use the phrase “court clerk,” which is more direct than “clerk of the court.” Say, “unless the court orders otherwise” rather than “unless otherwise ordered by the court.”

Eliminate ambiguous terms. “Shall” has various meanings, but “must,” “may,” “will” or “should” are more specific.

Avoid references to “sections” or “paragraphs.” Instead, use the subpart designation.

Use the active voice. It is more comprehensible and using it improves the overall quality of the rule.

Some comments may have outlived their usefulness. Relocate to the body of a rule any substantive requirements that might be contained in a comment. If a comment is necessary to understand a rule, there may be a need to rewrite the rule more clearly. The Civil Rules Task Force eliminated about 80 percent of the former comments; those that were retained stand out, and users probably will read them.

The Chairs thanked Mr. Rogers for his presentation and encouraged the members to review the conventions before beginning their restyling efforts. Judge Armstrong also recommended that members review corresponding civil rules during the FLR project and strive for uniformity with those rules wherever possible. Members need to specifically note any proposed substantive changes in their revisions. Finally, one sentence comments after many of the current FLR state that the rule is based on a specified civil rule. Although the Court prefers minimal comments, Judge Armstrong asked members to consider whether these current comments were useful and should be retained, possibly with a separate correlation table, or whether to remove these comments and provide only a correlation table.

**4. Workgroups.** The Chairs advised that Mr. Rogers and Mr. Meltzer will prepare a preliminary restyling of each FLR. They have now restyled about two-thirds of the FLR and they will complete the remaining rules before the March Task Force meeting. The Chairs will create four workgroups, each of which will be assigned a

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portion of the FLR. (Workgroup 1 will have Rules 1-35; Workgroup 2, Rules 36-48; Workgroup 3, Rules 49-75; and Workgroup 4, Rules 76-96. Each workgroup will also have responsibility for reviewing Rule 97 forms associated with their assigned rules.) The workgroups will review the preliminary restyling and discuss further revisions to each rule. The workgroups can meet in-person or telephonically at a time and place of their choosing. The workgroups will make recommendations to the Task Force based on workgroup discussions, but workgroups will not take formal action and their meetings are not public forums. Rather, the Task Force will decide, during open public meetings, whether to adopt, modify, or reject any workgroup recommendations.

Each workgroup will have a chair designated by Justice Berch and Judge Armstrong. Mr. Meltzer will attend workgroup meetings, and Task Force staff will be available for logistical assistance. The workgroups can access the rules on OneDrive; members should confer with Task Force staff to assure they have OneDrive access. The Chairs will assign members to workgroups following the adjournment of today's meeting. The Chairs will try to assign members to their preferred groups, but they will also consider balancing workgroups by geography and by the number of attorneys and judges in each group. The Chairs added that members may attend meetings of workgroups other than the one to which they are assigned. The Chairs announced a brief recess at this point of the meeting, during which each member indicated on workgroup sign-up sheets their first and second choices of workgroups.

**5. Discussion of specific items.** Judge Armstrong then led a discussion of several recent and pending items, which were included in the meeting materials and that members will need to consider during this project.

- The Court entered Orders in rule petition numbers R-16-0028 and R-16-0037 in late 2016. Judge Armstrong noted that changes made by these Orders to Rules 49(B) and 72, respectively, are not included in the 2017 volume of the Arizona Rules of Court.
- There are three pending rule petitions that affect the FLR. The State Bar filed R-16-0020, which concerns Rule 78 and the subject of attorneys' fees. The Court continued this rule petition to provide this Task Force with an opportunity to review, and possibly improve on, the proposed amendments to that rule. Two Arizona members of the Uniform Law Commission filed R-17-0017, which proposes a new Rule 67.2 regarding arbitration of family law matters. R-16-0019 proposes a new Rule 23.1 concerning improper venue.
- A.R.S. § 25-403(B) requires the Court to make findings on the record in contested legal decision-making and parenting time cases. Judge Armstrong noted the issue of whether the findings could be included in a minute entry or

order, rather than being stated orally and within what might be a lengthy transcript.

- *Griggs v. Oasis*, an October 2016 opinion from Division One, concerns the issue of immunity. Judge Armstrong asked workgroups to consider whether certain FLR, for example, the rule on parenting coordinators, should provide more specific guidance on immunity rather than refer to it generally.

6. **One Drive overview.** The Chairs then asked Julie Graber to introduce and explain OneDrive. Ms. Graber explained that OneDrive for Business is a component of Office 365. It facilitates cloud-based storage of documents and file-sharing, and will allow members to concurrently review and edit documents in real-time. Ms. Graber reviewed the log-on process, and demonstrated how to view documents and make edits. She recommended that each workgroup designate a single scribe during each meeting rather than having multiple ones. Members who have Word 2007 may have challenges with OneDrive, and these members may need to participate in workgroup meetings by WebEx. Ms. Graber invited members to contact her or Alex Fernandez de Jauregui, the AOC's SharePoint webmaster, at any time if they encounter difficulties with OneDrive. She noted that Ms. Williams soon would be sending the members an electronic link to the OneDrive log-in page.

7. **Roadmap.** The Task Force will meet about ten times this year. The Chairs proposed the following dates for the next nine meetings:

March 17 (likely to change)  
April 28  
June 2  
July 14  
August 25  
September 29  
October 20  
December 1  
December 15

Several members indicated they had conflicts with the March 17 and the June 2 dates. The Chairs advised they would look for alternate dates and staff would notify members of those new dates. The Chairs recognize that members may be unable to attend each meeting, and they encouraged members to send proxies in those circumstances. Excluding today and the final meeting, the four workgroups collectively will need to present at least a dozen rules at every Task Force meeting, so the workgroups should proceed accordingly. The Chairs requested workgroups to convene at least once before the March Task Force meeting, and for each workgroup to have several rules ready to

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present at that time. Workgroups also should advise staff which rules they intend to present at upcoming Task Force meetings; this will facilitate staff's preparation of agendas and meeting materials.

**8. Call to the public; adjourn.** The Chair noted that each public comment would be limited to three minutes. She requested that public members provide her with a comment request form before the call to the public. (Forms are available at the sign-in table.) She then made a call to the public, and in response the following individuals addressed the Task Force: Mr. Martin Lynch, Mr. David Alger.

The members then had a brief discussion about whether this Task Force would interact with the State Bar. Judge Armstrong noted the State Bar created a Family Law Practice and Procedure Committee following implementation of the 2006 family law rules. He anticipates this Task Force would liaison with and seek input from that committee, as well as other stakeholders, individuals, and groups, as the Task Force nears completion of a draft set of rules.

The Chairs thanked the members for their willingness to serve on this Task Force. The meeting adjourned at 12:05 p.m.